The American Political Science Review

Vol. XXII FEBRUARY, 1928 No. 1

PHYSICS AND POLITICS—AN OLD ANALOGY REVISED[1]

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I

It is just fifty-five years since Walter Bagehot wrote his *Physics and Politics*, a very suggestive book in its day. He began the first chapter of this book with a reference to "the sudden acquisition of much physical knowledge" which had marked the second half of the nineteenth century, and declared it his purpose to show the bearing of these new ideas upon the political conceptions of mankind. That purpose he fulfilled with much ingenuity, pointing out the various lines along which the advance in natural science seemed to suggest modifications in the old theories of the state and of government.

This was only a half-century ago; yet the new physics of Bagehot's day has already grown old. Its basic concepts have been turned inside out and upside down. Its laws relating to the indestructibility of mass and the conservation of energy have been radically amended. Even a generation ago the atom was held to be the ultimate and indivisible unit in the composition of the universe. It was the basis upon which the scientists of the nineteenth century built up an inclusive set of laws and principles relating to the structure of all creation. No one had ever seen an atom, but its existence could be postulated and its properties were held to be knowable.

[1] Presidential address delivered before the American Political Science Association at Washington, D. C., December 28, 1927.

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Today, all this is changed. The world is still composed of atoms; but we have discovered that they are neither indivisible, ultimate, nor indestructible. They are not the last word in matter, but are themselves incessantly in process of division into still smaller, highly-energized particles known as electrons. These diminutive units of disembodied electricity, as they may be called, are continually in flight, yet they form part of every atom in the universe. It is quite possible, and even probable, that these electrons are engaged in the business of transforming matter into energy, and energy into matter. If this be so, there is nothing solid in the old sense, nothing static, nothing that is not continually in process of change.

Nor is this all. In Bagehot's day the science of physics was mainly concerned with visible and large-scale phenomena, such as were observable to the naked eye. Today the natural scientist has shifted most of his attention to the study of small-scale and invisible things. The gross appearances no longer mean much to him. The general acceptance of the quantum theory has wrought a revolution in all the exact sciences. Even the chief corner-stone of the old physics, the law of gravitation, has been jolted out of place. Bagehot wrote in an age when scientists looked upon gravity as a force; today we are assured that it is merely one of the properties of space. And space itself is a concern of relativity, hence there is no such thing as absolute position or absolute movement. All things in the physical universe are relative to all things else.

It has been said that no metaphysical implications are necessarily involved in the quantum theory or in the doctrine of relativity, but it is difficult to believe that this can be the case. A revolution so amazing in our ideas concerning the physical world must inevitably carry its echoes into other fields of human knowledge. New truths cannot be quarantined. No branch of knowledge advances by itself. In its progress it draws others along. By no jugglery of words can we keep Mind and Matter and Motion in watertight compartments; hence it is inconceivable that a greatly changed point of view, or a series of far-reaching discoveries, in any one science can be wholly without influence

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upon the others, even upon those which are not closely allied.

Science begins by altering the day's routine and ends by transforming our whole orientation toward the social cosmos. The acceptance of the doctrine of evolution (to take an obvious illustration from the past) did not confine its effects to biology, or even to the natural sciences as a whole. It compelled a general recasting of the older ideas concerning the origin of the state and of government; it threw political science into a new dependence upon history, and led Sir James Seeley to declare in one of his famous epigrams that history without political science could have no fruition. It impelled the student of politics to look upon public institutions as part of the whole evolving order of things, like the protoplasmic cell and the living organism.

And so the "sudden acquisition of much physical knowledge" which has marked the first quarter of the twentieth century, quite as conspicuously as the latter half of the nineteenth, would seem to suggest the timeliness of examining once again the old foundations of political science upon which we have built our theories concerning the citizen's relation to his government. Natural science has moved a long way, not only from the teachings of Galileo and Newton, but even from those of Helmholtz and Kelvin; yet too many political scientists are still dallying fondly with the abstract formalism of Locke and Montesquieu, Austin, Blackstone, and Bentham. The science of government is still concerning itself with theories of absolute rights and duties, with old axioms about sovereignty and the general will, the sanction of law, the rule of public opinion, and the mass behaviorism of free and equal men and women who are assumed to be the ultimate atoms in the commonwealth.

It is still in bondage to eighteenth-century deification of the abstract individual man. Both the science and the art of government still rest upon what may be called the atomic theory of politics—upon the postulate that all able-bodied citizens are of equal weight, volume, and value; endowed with various absolute and unalienable rights; vested with equally absolute duties; and clothed with the attribute of an indivisible sovereignty. Under the influence of ideas which were borrowed from the old natural

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philosophy we continue to assume that the science of government can be a science only if it is based upon a series of ultimate and fixed uniformities. Our vernacular and our thinking are still heavily saturated with the idea that there are metaphysical principles of human liberty to which all governmental practice must conform. And these principles are embodied in a series of impostor pietisms which stultify the thought of the people and form the greatest of all obstacles to the orderly progress of social control.

So long as the social order was simple, without the unending complexities that have been infused into it during the past half-century, these older formulas were not beyond the power of rational minds to accept—just as the old concepts of natural science were able to pass muster in the days when laboratory experiments were simple and few. But we have now passed into an age when the vast laboratory of world politics is conducting experiments of every kind with unmeasurable rapidity, and we continue the attempt to explain *our* electro-dynamics in terms of mechanics—an attempt which the physicists abandoned a generation ago!

II

The American philosophy of government has exalted the individual citizen beyond all reason. It treats him as the incarnation of the Unknown Soldier. This is partly the result of our legacy from Puritanism, and in part the outcome of a pioneer insistence upon free scope for individualism. Hence it is the national habit to think of social control and individual freedom in terms of hostility to each other, whereas it is only through the one that the other can be realized under the conditions of today. For even as every molecule of physical matter is conditioned and directed by those with which it interacts, so the individual citizen is similarly motivated and controlled by the influence of those with whom he associates. These influences, moreover, are not radiated upon him most strongly by society as a whole but come from within his own orbit of life. They come directly from the immediate environment—his race, his religion, his political party, his

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labor union, his club, his newspaper, and all the rest. These influences are so penetrating, indeed, that for most of our citizenship the dogma of individual freedom is hardly more than a myth. Hence the first problem of political science is not that of adjusting social control to the interests of the individual citizen but of securing and maintaining a fair balance between the various groups to which the individuals belong.

In other words, it is time for political science to step up into line with the new physics by turning some of its attention to the sub-atomic possibilities. We should seek to discover the true reasons for that vast differentiation between good, bad, and indifferent citizenship which is perhaps the most obvious of all the phenomena of politics. We should enquire diligently into the nature and scope of the forces which make each civic atom what he is. And we should discard our allegiance to the absolute, for nothing would seem to be more truly self-evident than the proposition that all civic rights and duties, all forms and methods of government, are relative to one another, as well as to time and place and circumstance. They cannot be translated into unvarying formulas.

Both in the physical world and in the body politic the atoms have this in common, that they are neither ultimate nor indivisible. The individual citizen, when you pull him apart, is first of all a nucleus. He is the creature of a habit-system. But the whole training imposed upon us by civilization is based upon the assumption that human beings can be constrained or induced to modify their natural responses. More particularly they respond to the stimulus of ideas, the electrons of the social universe, and indeed our entire process of civic education—in the schools and colleges, by the press and at the forum—consists in bombarding the human nucleus with ideas. Some get attached, but the vast majority do not. The social atmosphere, like the physical universe, is filled with these invisible units of energy, moving at all rates of speed and penetrating power, gaining lodgment here and there, or departing from some human atom where they have been week-end guests. In the last analysis, the weight of the individual citizen in the body politic is dependent upon the

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degree of his receptivity to these rays of intellectual illumination; it is proportioned to the number and quality of the ideas that he assimilates and retains. It is this variableness of response to the stimulus of ideas that largely accounts for the diversity among citizens in relation to their government.

III

Hence we have the hydrogen citizen. In his journey through the seven ages of man he manages to capture only one electron. His primal instincts have become modified by some single controlling obsession. Militant reformers, in any field, are drawn for the most part from among men and women who belong in this category. The same is true of the die-hards at the other extreme, the reactionaries and the partisans of the hundred per cent variety. They, too, are what the physicist would now call "stripped atoms." Neither of these elements ever contributes much to the orderly progress of government as an art or as a science. To continue the metaphor, it is the precious metals of mankind, not the light gases, that give both stability and movement to the social order. Even as the physical world is a composite of matter and energy, which are no longer regarded as separable, so the world of political opinion is to be looked upon as a composite of numbers and intensity, a product arising from the continuous redistribution of social integrations. To the extent that energy is a substitute for mass, so the intelligence and the intensity with which convictions are held by a minority may offset a considerable deficiency in numerical strength.

Therein lies the flaw in such expressions as "the will of the majority" which suggest a purely quantitative measurement. The means by which a majority comes to be a majority is a matter of far greater importance than the mere existence of a majority as such. The actions and attitudes of the individual in politics become what they are by reason of the influences to which he is exposed, and more particularly the immediate influences, for the effectiveness with which a political idea or ideal can be transmitted is in part dependent upon the proximity of its source. The physicist is not content to know that the electron flies. He

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insists on knowing whence it cometh, whither it goeth, and to what purpose. The world is ruled by ideas which possess the power of penetration and lodgment. The electorate is merely the channel through which they become operative. Government is not, fundamentally, either an affair of laws or of men, but of imponderables behind both of them. To these imponderables, which constitute the invisible government, we have given very little of our attention; yet we must do it if political science is to maintain any contact with the realities.

How, then, can the sub-atomic forces which make for the improvement of citizenship be singled out, strengthened, and made more effective to the desired end? At present we have only a hazy notion of what they are, and only in a crude way do we know how they operate. All around us gigantic campaigns of civic education are being carried on, by organizations of every kind, every bit of it inspired by the hope of improving the attitude of the citizen toward his government, and especially his sense of civic duty. A large part of this effort is based upon the naïve assumption that if you only exhort people with sufficient earnestness they can be induced to accept irrational ideas embalmed in the rhetoric of patriotism.

No part of this nation-wide campaign for the promotion of better citizenship utilizes a technique that has ever been examined by scientific methods to discover whether it is adapted to the end in view. To a considerable extent, the money that is being spent upon these so-called campaigns of civic education represents pure futility and waste. The ardent efforts of well-meaning men and women are frustrated by their sheer irrelevance to the end desired.

Perhaps the most striking illustration of this has been afforded in recent years by expensive campaigns for improving the quality of our elective officials by the simple device of bawling at the voter to come out and vote. It is small wonder that these campaigns are accomplishing nothing, for they rest upon formulas concerning civic duty which are not merely unscientific but ridiculous.

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Political science, to become a science, should first of all obtain a decree of divorce from the philosophers, the lawyers, and the psychologists with whom it has long been in the status of a polygamous companionate marriage to the detriment of its own quest for truth. The philosopher, when he cannot account for a phenomenon in any other way, ascribes it to some occult quality in the moral nature of man. The psychologist, in like quandary, seeks the explanation by going through his inventory of standardized individual traits, although it ought to be clear that human behaviorism and its consequences cannot be even described, much less accounted for, by the study of the individual in isolation. Every increase in the knowledge of human nature results at once in a modification of human nature; hence it is rather optimistic to hope that social psychology will ever point us the way of explaining, much less controlling, the actions of men in the body politic.

Yet we are sometimes told that "political science must wait on social psychology." If so, it will be a long wait. The essentials of a scientific method are accurate observation, careful experiment, and cautious inference. The social psychologist has shown no exemplary devotion to these essentials. Much of his work remains in "the sublime cloudland of the *a priori*." Still, it is only fair to add, on behalf of social psychology, that it has taken the first step on the way to become a pseudo-science by providing itself with a technical jargon which is incomprehensible to the ordinary man. Much of its effort has thus far been devoted to the describing of commonplace political phenomena in foggy language which no politician could hope to understand.[2]

IV

Government, as Emerson once said, is "the greatest science and service of mankind." Yet the science of government has been probably the least successful of all the sciences in building

[2] Take this as an illustration: "Propaganda is the management of collective attitudes by the manipulation of significant symbols. The word attitude is taken to mean a tendency to act according to certain patterns of valuation. The existence of an attitude is not a direct datum of experience, but an inference from signs that have a conventionalized significance."

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up a set of principles upon which any body of men can agree. It has not yet caught up with meteorology, which can fairly be said, I think, to rank as the least exact of all the natural sciences. As a result of this backwardness in what may be called the pure science of politics, there has been almost no applied science of government worthy of the name. Government as an art has been so little perfected that, as respects most of the serious problems encountered by the public authorities, there has been no alternative but to rely on the promptings of political intuition.

The results are plainly visible in the great and ever-widening gap which separates government and technology. By the application of science to industry, transportation, communication, and construction we have made extraordinary progress during the past fifty years. But whether the world has made any progress at all, during this half-century, in the art of governing its people is a question that many of those best qualified to speak would answer in the negative. Our rulership over nature has become more commanding year by year; but man's rulership of man has made no such advance. The wheels of government have multiplied, and they are revolving at an increased speed; yet the electorate's control of them is certainly not firmer than it used to be.

Surely there is an element of danger in a situation where our progress runs so fast in all the sciences except the one that ought to be the greatest. For although science may be the basis of civilization, government is the retaining wall that holds the entire structure in place.

Every new application of science to industry makes life more complex, and hence government more difficult; for the difficulties of efficient government in a democracy increase as the square of the newly-created human relations. That is why the big industrial city is so much harder to govern than is the rural area of equal population. The leaning tower of Pisa is deemed to be one of the great wonders of the world, yet it is an infinitely less complicated affair than an urban metropolis like Chicago in which one can find at this very moment, side by side, much of the best industrial technique and some of the worst municipal administration on earth.

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To be safe, our progress in the art of government ought to go faster than the advance of applied science; but unhappily it is doing nothing of the kind. It is steadily dropping behind. If the Fathers of the Republic were to return to life, after their long sleep of a century, they would be equally appalled by the stupendous progress of the American people in all material things and by the relative lack of it in the art of government. Would they perceive any marked improvement in the way the laws are made, or the revenues raised, or the taxes spent? Would they note a conspicuous betterment in the caliber of the men elected to public office? Would they find our current political discussions above, or below, the plane represented by the letters in *The Federalist*? To ask such questions is to answer them.

Our immediate goal, therefore, should be to release political science from the old metaphysical and juristic concepts upon which it has traditionally been based; likewise to keep it clear of the sociologists and social psychologists who, if they could have their way, would only get us deeper into the morass of meaningless terminology. It is to the natural sciences that we may most profitably turn, in this hour of transition, for suggestions as to the reconstruction of our postulates and methods. Political science should borrow by analogy from the new physics a determination to get rid of intellectual insincerities concerning the nature of sovereignty, the general will, natural rights, and the freedom of the individual, the consent of the governed, majority rule, home rule, the rule of public opinion, state rights, laissez-faire, checks and balances, the equality of men and nations, and a government of laws not of men.

In place of these formulas it should seek to find concepts that will stand the test of actual operations, and upon these it should begin to rebuild itself by an intimate observation of the actualities. By analogy from the new physics, it should also turn part of its attention from the large-scale and visible mechanism of politics to the invisible and hitherto much neglected forces by which the individual citizen is fundamentally actuated and controlled. More than a half-century ago the new biology suggested to us the abandonment of old ideas concerning the spontaneous

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creation of government; today the new physics may well suggest the discarding of our atomic theory of ultimate, equal, and sovereign citizens in a free state. It is doubtless true that the natural scientist, as such, can never guide us to the true purposes and policies which should direct human action in matters of government; but there is at least some hope that by paralleling his objectivity of attitude, and his process of operational study, the political scientist may reach that goal some day.

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THE PERSONNEL OF THE ENGLISH CABINET, 1801–1924[1]

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I

A full history of the English cabinet would be one of the seminal works on the technique of representative government; for, as Bagehot was the first to point out, the cabinet has been the primary source of decision in the modern English institutional system. Few books, it must be added, would be so difficult to write. Until 1917, the cabinet was without a secretary or authentic records; and there are even today purists who regret these obvious innovations. What account we have of its working is thus necessarily spasmodic and partial in character. A statesman who took a note of some meeting where his department was affected, a debate in the House of Commons after some dispute which has entailed resignation, a chance entry in a diary, the occasional revelation of autobiography—it is upon materials such as these that we are largely dependent for our knowledge. Even semi-official accounts, like those of Lord Morley and Mr. Gladstone, hardly give us more than the formal outline of the cabinet as it functions.

Yet one clue to its character has been curiously neglected; and it illustrates, as it happens, the nature of the social system in England in a quite special way. We know the men who occupied cabinet office; and by a careful study of who they were we can at least draw some inferences of interest and even importance. These inferences, let it be said at once, will not explain in any way the technique of the cabinet system. But at least they will serve to measure the way in which the changes in the structure of English social life are reflected in the choice of those responsible for the nation's effective governance.

[1] I am indebted to Mrs. A. Henderson and Mrs L. Turin, of the London School of Economics and Political Science, for much help in the preparation of the tables presented in this article.

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The notes which follow are not intended to do more than point a way to the much more detailed analysis which requires to be made. They deal only with what may be called the modern period. They begin, that is to say, with the formation of the Addington administration in 1801; and they end with the Baldwin government of 1924. They seek to answer certain obvious questions. Who were the men who entered the cabinet in this century and a quarter of history? Were they aristocrats or plebeians? What were their professions? Where were they educated? Is there a difference in the personnel of the cabinet at one period and another? Does, for example, a widening of the franchise mean a widening of the area from which cabinet ministers are chosen? Is there any difference in the type of men attracted to the service of the two parties which, until 1918, were the major political organizations in England? What is the main burden of the results discovered? What suggestions do they imply for the coming years?

Let us be clear, in the first place, about our definitions. The tables which follow will show how considerable and how prolonged has been the place of the aristocracy in the English cabinet. How are we to fix the limits of that class? In England, very fortunately, there has never been an aristocracy of blood; all save the actual holders of peerages are, like the greengrocer and the bricklayer, commoners devoid of legal title to privilege. The English aristocracy, moreover, has always had a singular capacity, elsewhere unequalled, for absorbing external elements; lawyers, doctors, soldiers, sailors, business men, and civil servants have been admitted within its confines. For the purposes, therefore, of this study, the category has been defined as containing those cabinet ministers who have been the sons of men possessing hereditary titles. On this definition, Sir Robert Peel was an aristocrat and Lord Brougham was not; the first Lord Selborne was not an aristocrat, while his son, the second Lord Selborne, was. It follows that the tables below are to some extent weighted against the aristocracy; for there are men who belong to ancient families, like Mr. Chichester Fortescue and Sir William Harcourt, who are excluded from that class.

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A word is necessary also upon the assignment of cabinet ministers to their various professions. Those who are called lawyers, for example, do not include any except the men who definitely earned their livelihood as barristers or solicitors. Mr. Gladstone, for example, was called to the bar, but as he never practiced he finds no place among the lawyers. And, similarly, Macaulay, who practiced on the Northern Circuit for a few years (without success) is put, not among the lawyers, but, with Disraeli and Bulwer Lytton and Morley, among the men of letters, on the ground that this was in fact his effective vocation. So, also, the category of soldiers and sailors includes men like St. Vincent and Wellington and Kitchener who were warriors *de carrière*; but it does not include the very large number of peers and their sons who spent a few brief years in the Guards or the Hussars without seeking seriously to make the naval or military profession their life task. Where a cabinet minister went to any British university, account has been taken of it; and where, as in the earlier part of the period was not unusual, a statesman went both to Oxford or Cambridge and to a Scottish university (like Lord Henry Petty) he has been credited to both. For the category of public schools, apart from Eton and Harrow, nine of the principal schools have been investigated. Finally, in discussing the distribution of types among the political parties, Mr. Gladstone's first administration of 1868 has been taken as the starting point, on the ground that the present political labels date most effectively from that period.

II

In the period 1801–1924, a total of 306 persons held cabinet offices.[2] Table I gives the salient particulars.

TABLE I

Sons of nobility	182
Sons of other parents	124
Educated at Oxford	118

[2] The Lloyd-George war cabinet is counted as having contained five members only. This seems the fairer procedure, since many of the offices were temporary and many of their holders took no part in politics after the war.

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Educated at Cambridge	81
Educated at other universities	26
Educated at Eton	83
Educated at Harrow	36
Educated at other public schools	53
Lawyers	42
Soldiers and sailors	8
Business men	23
Civil servants	3
Men of letters and journalists	9
Trade unionists	8

The interest of this table is considerable. Nearly sixty per cent of cabinet ministers were born of immediately aristocratic parentage; nearly eighty per cent were either at Oxford or Cambridge; twenty-three per cent were Eton men, and over ten per cent from Harrow, while seventeen per cent were from eleven great public schools. Only thirty per cent were dependent upon their own efforts for a livelihood, and of these nearly half were lawyers. In part, the latter fact is to be expected, since the legal profession, as organized in England, is much the most compatible with a parliamentary career; while business men are, as a rule, able at only a comparatively late stage of their careers to devote themselves to politics. It is noticeable that very few civil servants have ever attained the eminence of cabinet rank; and that, thus far, the number of trade unionists is very small. Had this analysis, indeed, ended in 1905, it would have contained the name of no workingman.

Speaking broadly, the aristocracy with which we are concerned consists of a thousand families; but the actual number from which cabinet ministers have been drawn is much smaller. The Cecil family and its relatives, for example, have contributed six cabinet ministers to the total; the house of Grey five; the house of Stanley four; four families have three cabinet ministers each, and twenty-seven families two each. Among commoners, not unnaturally, no such persistent attainment of office exists. Two Gladstones, three Chamberlains, two Harcourts, and two Balfours exhaust

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the list. The explanation, of course, is largely personal and economic. A considerable section of the English aristocracy enters Parliament at an early age; and these persons are thus able to take advantage both of family prestige and freedom from material care. With commoners this is much more rarely the case, unless, as with the Chamberlains, the creation of an independent fortune makes devotion to business unnecessary.

The mere totals of this personnel do not, however, give an adequate picture of the evolution that has taken place. The period from 1801 to 1924 is divisible into certain well-marked epochs. There is (1) the period from 1801 to 1831—the *ancien régime* of modern English politics. There is (2) the period from 1832 to 1866, marked by the first Reform Act. There is (3) the period 1867 to 1884, marked by the second, and (4) the period from 1885 to 1905, marked by the third, Reform Act. In 1900 came the Taff Vale decision and, as a consequence, the entry of the trade unions into politics as the Labor party. This gives us another well-defined period (5) from 1906 to 1916, when the emergence of Mr. Lloyd-George as prime minister reaped the fruits of the war period; the final epoch (6) from 1917 to 1924 saw the acceptance of the Labor party as the official opposition and its first experience of office. Each of these periods deserves separate analysis. In our treatment of them it should be noted that each minister is counted separately if he held office, as did men like Gladstone and Disraeli, in more than one period. A number of ministers, therefore, appear more than once in the tables which follow.

TABLE II

Period I. 1801–1831. Total Number of Ministers, 71.

Sons of nobility	52
Sons of other parents	19
Educated at Oxford	24
Educated at Cambridge	24
Educated at other universities	7
Educated at Eton	20
Educated at Harrow	9
Educated at other public schools	13

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Lawyers	4
Soldiers and sailors	2
Business men	1
Civil servants	1
Men of letters and journalists	0

Seventy-three per cent of the cabinet were, therefore, in this period aristocrats. Every cabinet minister was a university man, and some sixty per cent were public school men, of whom Eton provided half. Only one business man attained high office; and the small number of lawyers—all of whom held legal posts—is explained by Lord Eldon's long tenure of the chancellorship. Obviously, in the first period the cabinet was a closely-guarded preserve of the aristocracy.

TABLE III

Period II. 1832–1866. Total Number of Ministers, 100.

Sons of nobility	64
Sons of other parents	36
Educated at Oxford	38
Educated at Cambridge	30
Educated at other universities	10
Educated at Eton	27
Educated at Harrow	11
Educated at other public schools	17
Lawyers	12
Soldiers and sailors	3
Business men	5
Civil servants	2
Men of letters and journalists	3

The period shows a slight decline (73 per cent to 64 per cent) in the proportion of aristocrats; a slight decline, also, in the proportion of university men; as also a slight increase in the proportion of public school men. There is a perceptible increase in the number of lawyers (partly accounted for by rapid changes in the chancellorship) and in the number of business men. Men of letters, also, appear effectively in the cabinet for the first time.

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But, taken as a whole, it cannot be said that the Reform Act of 1832 exerted any remarkable influence on the character of the cabinet.

TABLE IV

Period III. 1867–1884. Total Number of Ministers, 58.

Sons of nobility	35
Sons of other parents	23
Educated at Oxford	29
Educated at Cambridge	12
Educated at other universities	3
Educated at Eton	20
Educated at Harrow	5
Educated at other public schools	9
Lawyers	9
Soldiers and sailors	1
Business men	6
Civil servants	1
Men of letters and journalists	1

There is, again, in this mid-Victorian period, a slight decline in aristocratic personnel (64 per cent to 60 per cent) as compared with the second period; although, after two reform acts, the degree of its influence remains remarkable. Seventy-seven per cent of ministers were university men, and sixty per cent public school men. There is again, proportionately, a slight increase in the number of lawyers and business men.

TABLE V

Period IV. 1885–1905. Total Number of Ministers, 69.

Sons of nobility	40
Sons of other parents	29
Educated at Oxford	35
Educated at Cambridge	17
Educated at other universities	5
Educated at Eton	25
Educated at Harrow	9

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Educated at other public schools	12
Lawyers	9
Soldiers and sailors	0
Business men	6
Civil servants	0
Men of letters and journalists	1

The proportion of the aristocracy (58 per cent) is practically identical with that of the third period. The percentage of university men is 83—an increase probably due to the reforms of 1854—and of public school men, 65. The other figures show no considerable divergences from those of the previous period.

TABLE VI

Period V. 1906–1916. Total Number of Ministers, 51.

Sons of nobility	25
Sons of other parents	26
Educated at Oxford	20
Educated at Cambridge	16
Educated at other universities	5
Educated at Eton	12
Educated at Harrow	5
Educated at other public schools	8
Lawyers	9
Soldiers and sailors	1
Business men	5
Civil servants	0
Men of letters and journalists	3
Academic	1
Trade unionists	2

In this period the most notable fact is that the number of aristocrats is, for the first time, less than the number of commoners. The number of university men remains broadly constant, but the number of public school men shows a distinct decline (from 65 per cent to 50 per cent). There is, also, an increase in the number of lawyers, and the category of trade unionists makes

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its first appearance. Broadly, it may be said that this is the first of the periods under discussion in which commoners begin obviously to gain upon the aristocracy. Until 1906, the broadening of the franchise and the improvement of the means of education had not, in one hundred years of cabinet history, seriously affected the hold of the aristocracy upon the pivotal posts of government.

TABLE VII

Period VI. 1917–1924. Total Number of Ministers, 52.

Sons of nobility	14
Sons of other parents	38
Educated at Oxford	18
Educated at Cambridge	9
Educated at other universities	4
Educated at Eton	6
Educated at Harrow	8
Educated at other public schools	11
Lawyers	8
Soldiers and sailors	1
Business men	4
Civil servants	1
Men of letters and journalists	3
Academic	0
Trade unionists	8

The changes represented by the foregoing table, which includes the members of the first Labor government, are obviously profound. The aristocracy represents only twenty-seven per cent, the universities sixty, and the public schools only fifty per cent of the total. There are as many trade unionists as lawyers; and there are twice as many lawyers as business men. Obviously enough, had there been two Labor governments within the period, the influence of the aristocracy on the personnel of the cabinet would have been small indeed. It is clear, further, that the position of the Labor party in the House of Commons means that the decline in the percentage of university men is likely for

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a considerable period to be large; as also that the number of trade unionists is likely to remain fairly stable, at some such size as at least one-third of each Labor cabinet.

III

The statistics may now be analyzed from the angle of party. In the period since 1868 (omitting the coalition government of 1917–22) there have been seven Conservative governments, seven Liberal governments, and one Labor government; to which must be added the Asquith coalition of 1915 in which only experienced and, so to say, professional, parliamentarians found a place. Table VIII presents the same statistics as in previous tables for the different parties involved.

TABLE VIII

1868–1924

Name of Party	*Conservative*	*Liberal*	*Labor*
Sons of nobility	40	31	3
Sons of other parents	40	42	16
Educated at Oxford	38	28	3
Educated at Cambridge	16	23	2
Educated at other universities	4	3	1
Educated at Eton	31	14	0
Educated at Harrow	15	6	1
Educated at other public schools	13	12	3
Lawyers	15	17	2
Soldiers and sailors	1	1	1
Business men	6	9	1
Civil servants	0	1	1
Men of letters and journalists	1	5	3
Academic	0	0	0
Trade unionists	0	2	7

These figures suggest that no very considerable difference has existed between the Liberal and Conservative parties in the period under review. A Conservative cabinet tends to be slightly

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more aristocratic than a Liberal cabinet and to specialize in the possession of ministers who have been at the great public schools. The only man of letters in a Conservative cabinet was Disraeli, but the Liberals have five who earned their living by writing. The Labor cabinet contained three aristocrats, one of whom (Lord Chelmsford) was not a member of the party; and it is notable as having been the first cabinet since 1801 which contained no Eton men. Certain other conclusions suggest themselves. Apart from Mr. John Burns—since Mr. Arthur Henderson's appointment was an accident of the war period—no trade unionist has ever sat in either a Conservative or a Liberal cabinet;

TABLE IX

	Gladstone (1868)	Disraeli (1874)	Balfour (1902)	Asquith (1908)	MacDonald (1924)	Baldwin (1924)
Sons of nobility	8	10	12	6	3	9
Sons of other parents	11	7	11	14	17	12
Educated at Oxford	10	9	11	7	3	12
Educated at Cambridge	3	2	6	8	2	4
Educated at other universities	1	1	1	1	1	1
Educated at Eton	3	9	11	4	0	5
Educated at Harrow	0	1	2	3	2	6
Educated at other public schools	5	2	5	4	4	4
Lawyers	3	2	4	6	2	6
Soldiers and sailors	0	0	0	0	1	0
Business men	4	1	2	2	1	2
Civil servants	1	0	0	0	1	0
Men of letters and journalists	0	1	0	1	3	0
Trade unionists	0	0	0	1	8	0

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and there exists today no member of Parliament belonging to a trade union who, apart from a coalition government, would be likely to find a place there.

It is interesting from this angle to take a number of cabinets in detail since 1868, and to compare them with one another. For this purpose I have tabulated (Table IX) Mr. Gladstone's cabinet of 1868, Mr. Disraeli's of 1874, Mr. Balfour's of 1900, and Mr. Asquith's of 1908; Mr. MacDonald's cabinet and Mr. Baldwin's of 1924 being put alongside for purposes of comparison.

Obviously, there are no very great differences among these cabinets, apart from the Labor government. It will be noticed that, apart from the Asquith cabinet of 1908, and that of Mr. MacDonald, the number of ministers dependent for their living upon their vocation is small; in no case other than the two noted is it more than one-third of the total. Again, there is a tendency for Liberal cabinets to be slightly less aristocratic than Conservative. The predominance of Eton men among Conservative ministers is remarkable, and it is amusing to note that a Conservative prime minister educated at Eton, Lord Balfour, had colleagues almost half of whom were Eton men, while the cabinet of a Harrow prime minister, Mr. Baldwin, has in it the largest number of Harrow men ever collected in a single cabinet. Mr. Gladstone's administration of 1868 was the first cabinet in which no Harrovian, that of MacDonald the first in which no Etonian, found a place.

IV

Certain general characteristics of the figures here collected may be noted. In our period, 306 persons held cabinet office, and of them 182 were aristocrats. But if we subtract from the 306 the 93 who earned their living, no less than 213, or practically seventy per cent, were rentiers. Not less remarkable is the small number of professions from which the cabinet has been drawn. Outside the rentiers, practically five categories exhaust the list. No scientist, no engineer, and no doctor[3] has ever been a member

[3] Dr. Addison was, of course, minister of health under Mr. Lloyd-George; but his appointment was hardly less abnormal than that of Mr. Fisher.

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of the cabinet; and, with the exception of Mr. Herbert Fisher, whose appearance was an accident of the war, no academic person, though for a brief period both Robert Lowe and Viscount Gladstone were university dons.

It is interesting to discover the parental occupations of the non-aristocratic members of the cabinet in the period. Table X gives these for the 124 persons who form this class.

TABLE X

Parental Occupation	*Number*
Soldiers and sailors	6
Lawyers	18
Business men	36
Clergymen	20
Teachers	2
Doctors	4
Men of letters	1
Artists	1
Civil servants	1
Rentiers	23
Workingmen	12

From this table, certain obvious conclusions emerge. It is clear, in the first place, that the distribution of occupations among the parents of cabinet ministers is wider than among the ministers themselves. That business men should form the largest parental class is notable. But it is probably explained by the fact that most of them, like the Goschens and Chamberlains and Peases, were successful business men who were able either to support their sons during a parliamentary career (as Tierney) or to give them an education which permitted an alternative career like the law. The number of clergymen is explained partly by the fact that some of them, as Sir William Harcourt's father, were connections of ancient families and thus able to command political influence, and partly by the fact that all of them were able to give their sons a university education; most, in fact, were comfortably endowed. The number of rentiers, which here includes

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members of "county" families, is comparatively small; although had this investigation been concerned only with membership of the House of Commons, or even with minor ministerial posts, it would have been very much larger. It is worth remarking that, apart from Mr. John Burns and Mr. Henderson, no member of any cabinet previous to that of Mr. MacDonald was the son of a workingman.

I have spoken of the educational training of cabinet ministers, and it is perhaps worth while to examine the statistics in some little detail. Among the 118 Oxford men in the list, no less than sixteen colleges are represented. But sixty of the Oxford cabinet ministers were at Christ Church; and Balliol, which is next in the list has only seventeen, being closely followed by Oriel with twelve, and University with ten, respectively. On the basis of these figures, one or two facts are worth noting. The predominance of Christ Church is almost entirely due to its aristocratic connection, particularly in the period before 1867; since that time its degree of representation has declined. Of the Balliol men, all except one date from the epoch of Jowett. The Oriel men are mostly confined within the period when Hawkins and Copleston made it the outstanding college in Oxford; while nearly half of the representation from University College is due to the Cecil family. Of the Cambridge results, somewhat similar remarks may be made. Of the eighty-one Cambridge men who attained cabinet rank, fifty-four came from Trinity alone. St. John's has eleven, and Trinity Hall five, the remainder being distributed among six colleges. In view of its influence in the University, and, especially its connection with Eton, it is a little surprising to find that only two cabinet ministers came from King's College. Of the ministers educated at other universities, nine were from Edinburgh and six from London. It is notable that, except for Mr. Neville Chamberlain's brief attendance at Birmingham, no cabinet minister has so far been produced by one of the newer universities.

There is another interesting angle from which these figures may be analyzed. Dividing cabinet ministers into aristocrats

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and commoners, Table XI gives their age at entrance into the House of Commons and the cabinet in three periods within the last century and a quarter.

TABLE XI

	1801–1867	*1867–1905*	*1905–1924*	*Govt. of Mr. MacDonald*	*Govt. of Mr. Baldwin (1924)*
Age of entrance of aristocrats into the House of Commons.....	25.6	26.5	29.0	32.5	31.2
Age of entrance of aristocrats into the cabinet	45.9	43.4	44.5	55.0	44.0
Age of entrance of commoners into the House of Commons.....	35.9	38.7	40.0	43.4	42.8
Age of entrance of commoners into the cabinet	55.0	52.7	54.4	57.6	51.1

From this table, three obvious conclusions can be drawn. Aristocrats, firstly, enter the House of Commons and the cabinet ten years earlier, on the average, than commoners. The average age, secondly, at which men enter the House of Commons is rising for both classes; for aristocrats it has risen from 25 to 29, and for commoners from 35.9 to 40. The average age, thirdly, at which aristocrats enter the cabinet has slightly declined during the period, as is true also (the MacDonald cabinet apart) with commoners. The high average age at which aristocrats in Mr. MacDonald's cabinet first received such office is, of course, due to quite exceptional circumstances. What is mainly remarkable in the whole table is the immense differential advantage in time which an aristocratic politician receives by reason of his birth.

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V

"In England," wrote Matthew Arnold some fifty years ago,[4] "the government is composed of a string of aristocratical personages, with one or two men from the professional class who are engaged with them." Of the English cabinet system until 1905 this is no unfair account; and if since that time the generalization has lost some part of its force, it is still by no means negligible.

For, anyone who reflects upon the statistics here collected will be driven to certain irresistible inferences. The three reform acts of the nineteenth century had little effect upon the position of the aristocracy in politics. Policy may have changed, but the men who made policy came, in much the same degree, from the same origins as their predecessors. Even today, the aristocracy, together with the lawyer and the rentier, possesses a predominance in the personnel of English politics. Though the advent of the Labor party has altered for the moment the proportion of that predominance, it is by no means certain that it will not continue. For, in the first place, the Labor party needs lawyers and, accordingly, offers better prospects of speedy appointment to office than either of its rivals. If, moreover, Labor remains the alternative government, it will attract the more radical-minded members of the aristocracy in the same way that the Liberal party used to do; and in that event, especially if the House of Lords remains unreformed, the aristocratic member of the Labor party will have the same, if not greater, opportunities than he enjoys elsewhere. This thesis, of course, rests upon the assumption that there will be no drastic alteration in the laws of property and inheritance.

For the root of the hold retained by the members of the aristocracy is economic in character. In part, and perhaps mainly, it is derived from the possession of an income which renders these persons independent of the need to earn a living. In a lesser degree, the territorial influence of the aristocracy enables it to find seats for its members with less difficulty, and at an earlier age, than is possible for other classes. The only real competitors

[4] *Mixed Essays*, p. 164.

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of the rentier in the Conservative party are the lawyers; for, as has been pointed out, the number of vocations compatible with politics is small, and unless business men have independent means they enter the House of Commons (even more, the House of Lords) too late to embark upon a political career which may lead them to the cabinet. It is worth while noting, moreover, that until 1905 this was also true of the Liberal party; and, since that date, it is significant that the leaders of that party were either lawyers or men of independent means. Nor are there signs that, so far as the Conservative party is concerned, the change is a great one. The party had, in November, 1926, 410 members in the House of Commons. Of these, 53 were lawyers, 53 aristocrats, and 129 rentiers, while 18 were retired soldiers and sailors, and, of the remainder, more than 80 were possessed of means other than their vocational source of income. As in the case of cabinet ministers, there was a difference in average age in the party between aristocrats and commoners of more than ten years. nor is it without significance that most of those likely to attain office in the cabinet in the coming years belong to the three special classes noted.

The position of the business and working classes in the system is peculiar and interesting. The House of Commons has always, since 1832, contained a very considerable proportion of business men, and since 1895 an increasing proportion. There is, however, no sign that they are likely to enter the cabinet in any increasing degree. They enter the House too late to make a sufficient impression upon its leaders; and they cannot, like adherents of the Labor party, rest satisfied with the standard of life which a member's salary makes possible. Where they are outstandingly successful, on the other hand, their sons not seldom enter the House and, later, the cabinet. A business man, therefore, can, within the ambit of our system, found a dynasty of rentiers to whom the cabinet will lie open, even while he can hardly hope to enter it himself.

The position of the Labor member is different. The salary of a member of Parliament, with the possibility, further, of a supplementary income from his trade-union, offers the very considerable

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trade-union section of the party the chance of a fairly long parliamentary career at a standard of life which they regard as comfortable. For this section, however, the drawbacks, from the angle of office, are two in number. The period which must elapse before the average trade-unionist can hope for a safe seat from his party sends him into the House later than most other members; while defeat at a general election may, unless he is an official of his union, leave him without employment.[5] He is, moreover, rarely in a position to send his children into the House of Commons; Mr. Henderson is, so far, the only Labor member who has sat in the House with his own sons. The non-trade-union section of the Labor party is, with the exception of the Clyde group, in much the same position as members of the other parties. They are lawyers, rentiers, teachers, doctors, and their ability to pursue a parliamentary career depends upon the same considerations as affect the Conservative or the Liberal. The number of professions compatible with a political career is limited; and, broadly, the trade-union official in the Labor party has the same kind of advantage as the rentier or the lawyer.

A word should be said about the influence of the universities. It has obviously been profound. But, also, it is in a large degree secondary in character, since the men who went to the universities are, for the most part, the men who would in any case have entered the House. Where the university has counted is in the connections it has formed for men who, otherwise, would not have found the avenue to the House as direct as they did. Gladstone's Oxford friendship with Lord Lincoln gave him the opportunity of Newark; without it, he might have had to wait much longer for a seat. And it is clear that neither London nor the provincial and Scottish universities carry with them the same social connotation as Oxford and Cambridge. The claim that the latter are the nurses of statesmen means but little in the sense that the art of government can be acquired there. But in the sense that they open avenues more easily for those not of the aristocracy, the

[5] One former Labor member was compelled, in 1924, to apply for unemployment relief.

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claim is not to be denied. They are an integral part of that government by connection which is still influential in England.

The broad fact is that, even yet, political democracy in England has developed very imperfectly. There is no large equality of opportunity. Were tables similar to the above to be compiled for the cabinets of France since 1870 and the United States since 1789, the results would show an immense difference. In France the government of the Third Republic has been drawn almost entirely from the professional and middle classes; in the United States, although there was a considerable aristocratic and rentier element before the Civil War, the basis of government has been even wider than in France. Neither in America nor in France have the mind and imagination of the middle and working classes been subdued by the aristocracy as they have been in England. English liberty has not been paralleled by equality; and the conditions of English political institutions maintain that submission to the aristocracy by reason of the economic system they involve.

It is, of course, idle to seek to measure the degree of permanence in present English methods. Any aristocratic system which, like the English, has had a considerable degree of public spirit has obvious and great advantages over a purely democratic system. Its members are trained to the art of politics at an early age; and they acquire more easily than others the faculty of command and the ability to use other men gracefully, which are so important. Yet they possess it at a heavy price to the rest of the community. For an aristocracy, however public-spirited, is by its nature exclusive; and the experience it possesses at first hand is bound to be unduly narrow. In a state like Britain, where the equal claim of men on the common good is the touchstone of policy, the differential advantages which the present order implies make against the full understanding of wants by those who are called to rule. The English aristocracy, moreover, has long passed the zenith of its power. It no longer has a monopoly of the qualities which make for effective governance. It may even be said that the problems which confront civilization today are of a kind which call less for the qualities of an aristocracy than almost any others that can be imagined.

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If we in England are, indeed, to place the full experience of our society at its service, the barriers of privilege which, as here shown, we still retain are not merely anomalous, but undesirable. We are still living by what Matthew Arnold called our religion of inequality. We still offer special advantages in the search for power to those whose interest it is to prevent the democratization of the present order. To change this order is, doubtless, a delicate and difficult business, since it involves an alteration in the distribution of wealth and inheritance. Yet no society can genuinely humanize its institutions save as it becomes a community of equals. Equality alone breeds responsibility and elevation of mind in the multitude. Our system confers those habits upon a small number of men, but the privileges it offers to birth and wealth prevent their extension to the masses. For when new ideas are changing the perspective of men's habits of thought, those people can most usefully exercise power who see the implications of such ideas. It is the thesis of our system to open the road to authority less to these men than to those sections of society which have most to lose by their introduction and acceptance.

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THE SEPARATION OF POWERS IN THE EIGHTEENTH CENTURY

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"Justice is the end of government. It is the end of civil society."[1] Thus the authors of *The Federalist* defined the purposes of the government created by the Federal Convention. But they reached this definition as the conclusion to a discussion of the factious nature of mankind. Madison had already remarked that the causes of faction could not be removed without abolishing the liberty which is essential to political life. He believed, however, that the control of its effects was within human power. To the mind of the Virginian the vital political forces in the state should be tied up in a nice poise through the clauses of a written constitution. A government so contrived would, as Madison believed, "secure the permanent interests of the country against innovation."[2]

The ideal which Madison envisaged was one of dynamic equilibrium. He thought that by deriving the various branches of the government from different sources all positive action to the detriment of established order and guaranteed rights would be checked from the outset. Every safeguard against "the mutability of public councils" was to be embodied in the interior structure of the government itself. It was not enough that government should have a dependence upon the people; "experience has taught mankind the necessity of auxiliary precautions."[3]

The political experience to which Madison referred was fresh in the minds of all the men who assembled at Philadelphia in the summer of 1787. It was afforded by the thirteen states, in none of which did political practice square with the expressed provisions of its constitution. In every state the most earnest

[1] *The Federalist*, No. 51.
[2] W. S. Carpenter, *Democracy and Representation* (1925), p. 22.
[3] *The Federalist*, No. 51.

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efforts to keep the several departments of government within their constitutional limits were defeated by the encroachments of the legislature upon the executive and the judiciary. The sonorous phrases of the Massachusetts constitution of 1780, outlining the doctrine of the separation of powers, stated the accepted constitutional theory from New Hampshire to Georgia. But the actual practice was so different that we find Madison declaring: "If we look into the constitutions of the several states we find, that notwithstanding the emphatical and, in some instances, the unqualified terms in which this axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct. . . . . It is but too obvious that in some instances the fundamental principle under consideration has been violated by too great a mixture, and even an actual consolidation of the different powers; and that in no instance has a competent provision been made for maintaining in practice the separation delineated on paper.[4] . . . . The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex. . . . . The conclusion which I am warranted in drawing is, that a mere demarcation on parchment of the constitutional limits of the several departments, is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands."[5]

When Madison told the Federal Convention that among the objects of the new government would be to provide "more effectually for the security of private rights and the steady dispensation of justice," he referred to the abuses resulting from legislative supremacy in the states.[6] Paper money legislation and stay laws had undermined the rights to liberty and property until they no longer existed, except at the will of the legislature. With legislative power not defined, except in formal terms, there could be no security of private rights against temporary majorities in pursuit of their selfish interests.

[4] *The Federalist*, No. 47.
[5] *Ibid.*, No. 48.
[6] M. Farrand, *Records of the Federal Convention* (1911), I, pp. 133–134.

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Now, the first state constitutions contained in singular juxtaposition the doctrine of natural rights and the theory of legislative supremacy. The latter, however, was inserted because of the necessity of the political situation, and was not fundamental. Nearly all the revolutionary constitutions were framed by the legislative assemblies, which quite naturally wished to secure for themselves a large measure of authority. Moreover, legislative supremacy was expected to prove popular. The people had found cause to distrust the royal governors and the judges, while they regarded the colonial assemblies as the defenders of popular rights. The legislative power had carried the colonies through the difficult business of separation from Great Britain and had thereby won the approbation of the patriots. It therefore seemed a practical solution of existing difficulties to lodge extreme power in the hands of the legislature.

The doctrine of natural rights, on the contrary, was fundamental to the entire revolutionary propaganda. It was clearly enunciated in the Declaration of Rights issued in 1765 by the Stamp Act Congress and embodied the cardinal doctrine of the Revolution, that the colonists were entitled to the common law rights. The Declaration of Rights issued by the Continental Congress in 1774 was merely a clearer and more consistent statement of the earlier principles. It was from this declaration that the framers of the state constitutions took their model for the bills of rights. "These latter documents were little more than amplifications of this instrument of 1774, plus the doctrine of popular sovereignty."[7]

The defective character of the governmental machinery for the protection of private rights was due chiefly to the faulty knowledge of the revolutionary statesmen. Although the authors of the first state constitutions "understood perfectly the principles of liberty," yet most of them "were ignorant of the forms and

[7] W. C. Webster, "A Comparative Study of the State Constitutions of the American Revolution," *Annals of the American Academy of Political and Social Science*, IX, p. 385.

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combinations of power in republics."[8] They turned readily to the doctrine of the separation of powers and the corollary system of checks and balances. Men like Jefferson, Mason, and John Adams were fully informed by reading the pages of Montesquieu of the importance of maintaining in government an equilibrium of power.[9] But they had nowhere to look for the application of the Frenchman's principles in the actual conduct of political affairs.

It is true that Montesquieu assumed the existence in England of a political system in which the separation of powers, supported by a set of checks and balances, occupied a central position. But the assumption proved to have little basis in fact. At the precise moment when Montesquieu was formulating his principles, the British government was assuming a form inconsistent with the doctrine of the separation of powers. Acquiescence in the appointment of members of the House of Commons to places of honor and trust by the crown had converted the political system of Great Britain into the mixed form of government despised by Hobbes.[10] An absolute separation between members of Parliament and places, declared one pamphleteer, is "an impossibility, owing to the nature of our government, which is mixed, and to that of mankind, who are not to be divested of their natural appetites and passions."[11]

The apparent free reign of human greed which is here envisaged is nothing less than the incipience of the party system. It is to the credit of Robert Walpole that he seized upon the idea of the utter depravity of man to establish it as a working principle of statesmanship. "Disliked by the Sovereign, as well as by the people," wrote an enemy of Walpole, "he erected an intermediate power for himself, by which he commanded both. He overawed the Nation with the power of the Crown, and he terrified the

[8] E. S. Corwin, "Progress of Constitutional Theory between the Declaration of Independence and the Meeting of the Philadelphia Convention," *American Historical Review*, XXX, p. 513.

[9] See the writings of Jefferson and Adams, and K. M. Rowland, *The Life of George Mason* (1892).

[10] *Leviathan*, Chap. 19.

[11] *Vindication of the Honour and Privileges of the Commons of Great Britain* (1740).

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Prince with imaginary and well contrived fictions of disaffections in the subject. This method of government at once satisfied the ambition of the minister and glutted the avarice of his friends and dependants."[12] The foundations laid by Walpole were continued by the Pelhams until, by the time of Chatham, the structure of the party system was fully reared.

Party organization in the Walpole era was undoubtedly shaped through bribery and corruption. Ministerial combinations on the one hand thwarted the direction of members of the House of Commons by their constituents, and on the other hand broke down the barriers between legislative and executive power. But these innovations were regarded as political evils only by the Tory opposition.[13] From this source Walpole had little to fear, as long as he could attach to the Tories the stigma of foreign intrigue and dalliance with Jacobite plots.[14] He was therefore free to consolidate his control of the government through the maintenance of a party majority in the House of Commons.

Ministerial combinations, based upon parliamentary interest, were the foundations of the cabinet system. The work which Walpole began was put to the test in 1746 by the Pelhams. In that year the failure of George II to form a ministry which had not the support of a majority in Parliament marked the downfall of personal government by the king. "Ministers are the king in this country," exclaimed the monarch in his chagrin.[15] By this remark the Hanoverian showed his wisdom and his insight. For the changes to which he stood an unwilling spectator established the ministers who could command a majority in both houses of Parliament as the government of Great Britain. The rise of the

[12] *The Political Conduct of the Earl of Chatham* (1769). Chatham MSS, No. 82.

[13] *An Address to the Electors* (1739); *A Letter to a Member of Parliament from a Friend in the Country* (1739); *Directions and Advice for the Choice of Members of Parliament* (1741). See also *The Danger of Mercenary Parliaments* (1722); *A Complete History of the Late Septennial Parliament* (1722); and *Benefits Gained by the Late Septennial Parliament* (1722).

[14] *An Impartial Enquiry into the Reasonableness and Necessity of a Bill for Reducing and Limiting the Number of Places in the House of Commons* (1739).

[15] M. T. Blauvelt, *The Development of Cabinet Government in England* (1902), p. 177.

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cabinet system thus created a new organ of control which gave stability and equilibrium to the British constitution upon a principle different from that of Montesquieu.

On this side of the Atlantic, however, the significance of the changes taking place at Westminster was not perceived. Men saw the corruption of Walpole but were blind to his administrative genius. They recognized that somehow the king himself had been superseded by the ministry as the actual agency of government.[16] But they still considered it the duty of the king to rule, and viewed the eclipse of royal power by ministerial groups as an aberration from the principles of the British constitution. "The people of America did not oppose the British king but the Parliament," said James Wilson; "the opposition was not against an unity but a corrupt multitude."[17] Across the black morass of English political corruption the principles of Montesquieu loomed to American statesmen all the more vividly. The doctrine of the separation of powers and the system of checks and balances were exalted as affording the only political devices adequate for the preservation of liberty.[18]

The writings of Montesquieu were accepted at Philadelphia as political gospel. But the principles they set forth were not unknown in American political experience. Indeed, the doctrine of the separation and balance of powers was proclaimed in Massachusetts before the *Esprit des Lois* saw the light.[19] In 1742 the house of representatives in Massachusetts rejected the demands of Governor Shirley for a permanent salary on the ground that it "would greatly tend to lessen the just weight of the other two branches of the government, which ought ever to be maintained and preserved; especially since the governor has so great authority and check upon them." This was no chance remark of the

[16] H. J. Ford, *Rise and Growth of American Politics* (1898), p. 176.

[17] Farrand, *op. cit.*, I, p. 71.

[18] *The Federalist*, No. 47.

[19] The doctrine of the separation of powers was expounded by at least one eighteenth-century writer before Montesquieu, i.e., P. de Rapin-Thoyras, in his *The History of England* (1732–3). This book was known in the American colonies and was quoted by a number of the revolutionary pamphleteers. See Richard Bland, *Enquiry into the Rights of the British Colonies* (1769).

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deputies, for they had in view as their model the British constitution, "the strength and beauty of which chiefly consists in that mutual check which each branch of the legislature has upon the other." A similar balance of power they thought ought to be maintained in the government of Massachusetts. "There ought not to be an independency in either branch of the legislature," they concluded, "forasmuch as to be independent and arbitrary are the same things in civil policy."[20]

Although lacking in scientific precision, the political dynamics of colonial Massachusetts aimed to balance prerogative and popular rights. Practical difficulties arose because the governor and the deputies had their powers defined by different instruments. The governor was bound by his instructions, while the deputies looked to the charter of 1691 for the scope and limits of their authority. On the salary question the governor could only reiterate the instructions received from the crown; he could not coerce the popular assembly.[21] But when the deputies undertook to secure for themselves timber from lands reserved to the crown, adjourned their sessions for several days without the consent of the governor, and sought to suspend a military officer in the service of the king, their conduct was properly restrained as an encroachment upon the prerogative.[22]

The political ideal of a balance of power among the different branches of the government was menaced by the selfish interests of the popular delegates. The same spirit of faction against which the statesmen of 1787 sought to find safeguards appeared in the colonial government.[23] Opinion in the house of representatives was created, according to Governor Shute, "by the artifice of a few designing members, together with the insinuations of the people of the town of Boston." It was the object of these demagogues to make the country members "believe that the

[20] *C.O. 5 No. 753.*

[21] *Collection of the Proceedings of the Great and General Court . . . .*(1729), pp. 13–112; G. A. Wood, *William Shirley* (1920), pp. 110–114.

[22] *C.O. 5 No. 752; C.O. 324 No. 35; British Museum Add. MSS. 35, 908.*

[23] The discontent was not confined to Massachusetts, but spread to other colonies as far south as the Carolinas. See the complaints of the governors in E. B. Greene, *The Provincial Governor* (1898), pp. 178–179.

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House is barely supporting the privileges of the people, whilst they are invading the undoubted prerogative of the Crown." Among the people he noted "a levelling spirit too apt to be mutinous and disorderly."[24] Nor was the situation different in 1728 when the people of Boston in town meeting debated the question of fixing a permanent salary. Upon this occasion, Governor Burnet determined to overcome the undue influence of the Bostonians by removing the legislature to Salem.[25]

It was Benjamin Franklin who first clearly discerned the nature of the evil which threatened local self-government in America. "Faction," he remarked in 1736, "if not timely suppressed, may overturn the balance, the palladium of liberty, and crush us under its ruins." He recalled the "common proverb, that the voice of God is the voice of the people." But this, he observed, is true only while the people "remain in their proper sphere, unbiased by faction, undeluded by the tricks of designing men."[26] The wisdom of Franklin was amply justified by the political events of his own day.

For the representatives of the people were shrewdly endeavoring to augment their power. In 1742 the Massachusetts legislature passed bills for dividing three existing towns, thereby creating three new ones. It did not escape the attention of Governor Shirley, as he vetoed the measures, that an increase in the number of deputies in the General Court would change the balance of power among the different branches of the provincial government. The superiority of the deputies to the council in point of numbers, in his judgment, already gave the popular assembly an advantage in the government. The governor admitted that it was never the practice of the towns to send to the legislature the full representation to which they were entitled. "But still they have it in their power," he said, "upon an extraordinary emergency to double and almost treble their numbers, which they would not

[24] Memorial of Governor Samuel Shute to the King (1723). Reprinted in W. S. Perry, *Historical Collections Relating to the American Colonial Church* (1876), III, pp. 121–126.

[25] *Collection of Proceedings*, etc., p. 90.

[26] B. Franklin, *Works* (ed. Bigelow), I, p. 428.

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fail to do, if they should be desirous of disputing any point with his Majesty's Governor, which they might suspect their ordinary members would not carry against his influence in the House."[27]

The charter of 1691 established the General Court, consisting of the governor, council, and deputies, as the legislature in Massachusetts. It recognized the existence of specific powers in the hands of the governor, many of which could be modified or enlarged by instructions from the crown, and gave him a negative upon the acts of the other branches of the legislature. But the charter nowhere recited the powers conferred upon the house of representatives. They were prohibited from enacting any laws repugnant to the laws of England, and were directed, with the advice and consent of the council, to impose rates and taxes for the necessary defense and support of the provincial government.[28] Unless checked by the governor or council, or by the disallowance of an act by the Privy Council, the deputies had no means of ascertaining the scope and limits of their authority.

It is not surprising that the colonists came to regard the legislative as an undefined power. Especially within the field of taxation, the view prevailed that the deputies of the people were the final judges of their own authority. "May not the House of Representatives," asked the Massachusetts deputies, "who act for, and may be said to be the people, and pay the money, have the disposition of some part of it?"[29] Of course, it may be argued that the deputies were ignoring the constitutional position of the different branches of the legislature.[30] But this was an error which under the circumstances might be expected. They had no clauses in their charter whereby to define their powers, and they could not, in the salary question, leave final judgment in the hands of the governor. To do that would be to make him the judge in his own case. The want of an organ of control in

[27] *Acts and Resolves of the Province of Massachusetts Bay*, III, p. 69.

[28] The charter of 1691 is reprinted in W. MacDonald, *Select Charters* (1899), pp. 205–212.

[29] *Collection of Proceedings, etc.*, p. 104.

[30] J. T. Adams, *Revolutionary New England* (1923), p. 135.

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the government responsible to the people thus resulted in a deadlock.

The importance of the dispute over fixing a permanent salary for the governor in Massachusetts can hardly be overestimated. It not only revealed the enormous possibilities for resistance in the undefined powers of the popular assemblies but also convinced thoughtful men of the necessity of establishing an agency of control in the government. When the confusion incidental to the activities of the war for independence had cleared, the evils of the earlier situation were not corrected, but obscured, in the governments of the thirteen commonwealths. Executive tyranny was no longer feared, because the governors in the states had been subordinated to the legislatures. But from New England to Georgia, legislative power was undefined.[31] Private rights were therefore open to invasion whenever popular majorities in pursuit of their selfish interests chose to exert their power through the state legislatures. The extent to which this was done without restraint induced the meeting of the Federal Convention.

The men assembled at Philadelphia received little help from English experience in formulating safeguards against legislative tyranny. No political system was quoted as frequently in the debates as the British constitution. It was, in the opinion of Alexander Hamilton, the best in the world.[32] But his colleagues were disposed to agree with John Lansing that "the point of representation could receive no elucidation from the case of England."[33] The reason is not difficult of access. Throughout the debates there is a constant stream of criticism of the representative system in England. The speeches of Wilson, Franklin, and Mason reflect the prevailing belief that popular privileges in England had vanished in an orgy of political corruption.[34] Their arguments might form a brief in behalf of parliamentary reform, but for the Philadelphia convention they had only negative value.

[31] Corwin, *The Doctrine of Judicial Review* (1914), p. 35.
[32] Farrand, I, p. 288.
[33] *Ibid.*, p. 337.
[34] *Ibid.*, pp. 82, 99, 254, 376, 381, 450.

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Hamilton discerned clearly enough the true course of English political development in the eighteenth century. He pointed out that "Hume had pronounced all that influence on the side of the Crown, which went under the name of corruption, an essential part of the weight which maintained the equilibrium of the constitution."[35] The same thought had already been expressed by John Dickinson, who inquired what was to replace in our government the attachments which the Crown draws to itself and thereby stabilizes the British political system.[36] Hamilton answered, interest. "The government," he said, "must be so constituted as to offer strong motives. In short, to interest all the *passions* of individuals. And turn them into that channel."[37]

Other members of the convention compensated for their ignorance of the British constitution by displaying their knowledge of human nature. "Loaves and fishes must bribe the demagogues," declaimed Gouverneur Morris. "Vices as they exist must be turned against each other; one interest must be opposed to another interest."[38] The problem of government he regarded as one of invention, whereby distinct interests were to be given mutual checks in order to obtain mutual security. By this means alone could they reward Edmund Randolph's search for "such a check as to keep up the balance, and to restrain, if possible, the fury of democracy."[39] In other words, conflicting interests in the state were to be recognized and introduced directly into the public councils.[40]

English experience was consulted to the extent of providing for the exclusion of members of the judiciary, together with the executive, in a council to revise acts of the national legislature. Many members argued vigorously for the council of revision, but it was rejected upon the ground that it was inconsistent with

[35] Farrand, I., p. 376.
[36] *Ibid.*, p. 86.
[37] *Ibid.*, p. 311.
[38] *Ibid.*, pp. 512–513.
[39] *Ibid.*, p. 58
[40] Carpenter, *op. cit.*, pp. 76 *ff.*

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the proper separation of powers.[41] Likewise the proposal to associate with the executive a council composed of members from both houses of the legislature was voted down. This action admittedly increased the executive power, but there was no alternative if the convention remained true to the fundamental principle of its scheme of government.[42]

The Constitution was the practical embodiment of the doctrine of the separation of powers and the system of checks and balances. But the Federal Convention adjourned without knowing how the partition of power among the several departments was to be maintained. When the authors of *The Federalist* first confronted this question, they thought the only answer was "that the defect must be supplied by so contriving the interior structure of the government as that the several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places."[43] In other words, they thought of the system as one in which personal interests and motives remained fixed in equilibrium. "Ambition must be made to counteract ambition," they said. "The interest of the man must be connected with the constitutional rights of the place." No department of the government was yet regarded as possessing authority sufficient to draw the line of demarcation between the powers of coördinate departments.

A few weeks later Hamilton gave the final answer when he pointed to the judiciary as the department which was to maintain the Constitution against every encroachment. "A constitution is, in fact, and must be regarded by the judges, as a fundamental law," he said.[44] The Constitution of the United States ought, therefore, "to be the standard of construction for the laws, and

[41] Corwin, *The Doctrine of Judicial Review*, pp. 41–42. The debates will be found in Farrand, *op. cit.*, II, pp. 73–80.

[42] *Ibid.*, pp. 284–285, 329.

[43] *The Federalist*, No. 51. See the debate in the House of Representatives on June 16, 1789, on the establishment of a department of foreign affairs. On this occasion Madison advanced the theory of departmental construction of the Constitution, which was denied by Gerry and others. *Annals of the First Congress*, I, pp. 479 ff.

[44] *The Federalist*, No. 78.

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wherever there is an evident opposition, the laws ought to give place to the Constitution." This doctrine, it is true, is not embodied in specific clauses of the document, but is deducible "from the general theory of a limited Constitution."[45] The claim that the legislative body are themselves the final judges of their own powers, Hamilton objected, assumes that the Constitution intended to enable the representatives of the people to substitute their will for that of their constituents. "It is far more rational," he said, "to suppose that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority."[46] With the growth of judicial review, the task of maintaining the separation and balance of powers established in the Constitution devolved upon the courts.

[45] *The Federalist*, No. 81
[46] *Ibid.*, No. 78.

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A DECADE OF SINO-RUSSIAN DIPLOMACY

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The diplomatic relations between China and Russia in the past decade present a tangle of converging factors among which the Chinese revolution, the World War, and the Russian revolution play a great part. They are, however, only a phase in the larger process of imperial dissolution and national revival which has encompassed both the Russian and Chinese states and remarkably transformed them within the space of a generation. It is in relation to the forces unleashed by the disintegration of the Romanov and Manchu empires that the decade's changes in diplomatic policy must be viewed.

I

The most significant factor underlying the reorientation of Russian and Chinese foreign policy was the abolition of the monarchy in each country; for, with the fall of the imperial houses, came the beginnings of political and administrative disintegration, the resurgence of local nationalism, and the loosing of the centrifugal forces which the defunct dynasties had held in check. It is not our problem here to trace the constitutional consequences of such a vacancy of power in either domain, but to note the salient fact that it was a difficult, if not impossible, task immediately to create an efficient substitute authority for the dead and departed emperors, and that, in view of that difficulty, provincial separatism was for a time allowed to gain such headway as to constitute a serious menace to the national integrity of both the dissolving empires. The weakening of the internal machinery of the state in each instance, due to the lapse of such moral authority and centralization as attached to the imperial office, operated to accentuate the desire for administrative separation of the outlying dependencies, and consequently to give rise to intricate international complications.

The second factor conditioning the relations between the two countries has been the resurgence of national feeling, not merely

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among the Chinese and the Russian peoples, properly speaking, but among the submerged nationalities of each empire. This national resurgence was due in part to the incursion of the industrial revolution to new areas, in part to a hatred of "foreign" oppressors, and last but by no means least, to the appealing ideology of either a democratic or a proletarian revolution. The Chinese revolution of 1911, spreading the democratic doctrine borrowed by Chinese intellectuals from their contacts with the Occident, and the Russian revolution of 1917, which was destined to diffuse throughout the Orient the gospel of communism as the sole means of national salvation from imperialistic doom, have contributed materially to the building up of that confused complex of new ideas and ancient traditions forming the mass opinion of the peoples of both the former empires.

The leaders of the Chinese revolution, attributing China's international servitudes to the progressive capitulation of the Manchus to the demands of foreign powers, sought, through the adoption of politicalre publicanism and a democratically conceived foreign policy, to liberate their country from the strictures imposed upon her by the Occident. They deemed it impossible that a government based upon popular sovereignty should continue the abject humiliations to which the later Manchus had subjected the empire. The revolution, therefore, in the minds of its leaders, connoted a break with the policy of increasing submission and subjection, and the inauguration, diplomatically, of an era of recovery of national rights. But it signified also the passing of the first blind impulses of indiscriminate xenophobia —such as was evidenced in the Boxer uprising—and the beginning of a new endeavor to win back, by negotiation, and by producing a division in the ranks of the Great Powers, the rights abandoned by the old régime. Up to the period of the World War, however, the Chinese republic encountered a solid phalanx of diplomatic adversaries, who presented a united front and rejected virtually all the overtures looking to a conventional abandonment of their acquired rights.

Not the least insistent of China's adversaries was imperial Russia. The Czar's government sought to profit from the dis-

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sensions and internal weaknesses of the first years of the Chinese revolution and to encroach still further on the new-fledged republic, not so much through obtaining new concessions as through facilitating the severance from China of outlying portions of the former imperial territory and their assimilation into the Romanov empire. A great country which had unwillingly retreated from Manchuria and reluctantly abandoned Korea to Japanese domination, and which was then making new demands upon defenceless Persia, could hardly be expected to look with other than covetous eyes upon Mongolia and Turkestan. It is not surprising, therefore, that when Mongolia, following the overthrow of the Manchus, proclaimed her independence,[1] Russia stepped in to assure the region a definite legal status and enhance her own rights.[2] It was not, however, until the World War was in progress that Russia, by a tripartite agreement, consolidated her official protectoral position.[3] Autonomous Outer Mongolia thereby became a recognized, but not fully independent, state —a vassal of China under the virtual protectorate of Russia. Here were evidences of the disintegration of China comparable to that of the Ottoman Empire as indicated by the treaties of Adrianople, Paris, and Berlin. The Kiakhta agreement was in fact intended to give the Romanovs a strategic position, buttressed by additional railway and telegraph agreements,[4] looking to the eventual incorporation of Mongolia—all this at the very

[1] December 1, 1911. Cf. *China Year Book* (1914), p. 621.

[2] Cf. the treaty of Urga, November 3, 1912 (*Izvestia*, 1913, Vol. II, p. 16, and J. V. A. MacMurray, *Treaties and Agreements With or Concerning China, 1894–1919*, Vol. II, pp. 992 ff.), whereby Russia pledged her assistance in the maintenance of Mongolian autonomy while obtaining the extension and confirmation of her rights under the new régime; also the Sino-Russian Declaration of Peking, November 5, 1913 (*Russian Bulletin of the Laws*, No. 270, Sec. 1., December $^{6}/_{19}$, 1913, and MacMurray, *op. cit.*, Vol. II, pp. 1066–1067) reaffirming Mongolian autonomy, recognizing China's nominal suzerainty over Mongolia, and pledging the signatories to abstain from colonizing. This agreement fell slightly short of a formal protectorate, Russia merely pledging her good offices in the regulation of Sino-Mongol relations.

[3] Treaty of Kiakhta, June 7, 1915 (*Izvestia*, 1915, Vol. V, p. 6; MacMurray, *op. cit.*, Vol. II, pp. 1239 ff.) *Inter alia*, Mongolia was not permitted to conclude any international treaties on political and territorial questions.

[4] Agreements of Kiakhta, September 30, 1914 (*Izvestia*, 1915, Vol. I, p. 3; Mac-

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time when Japan was pressing upon China the famous twenty-one demands which would have brought Manchuria more effectively under the Mikado's control.

The foregoing evidence with regard to Mongolia will suffice to demonstrate how, up to the very end, the Russian autocracy remained predatory, aggressive, imperialistic, and sought, even during the World War, to hasten the dismemberment of China, hoping to garner territorial spoils. At the same time it sanctioned, through secret negotiations, the aggressive policies of Japan.[5]

With the coming of the Russian revolution, the situation was destined to change, although no appreciable deviation from imperial policy was noticeable under the short-lived Russian provisional government, which, despite its democratic character, held fast, in its dealings with the Orient, to the cardinal principles of foreign policy laid down by the Czarist régime. The single momentous fact in Sino-Russian relationships during the existence of the provisional government was China's entry into the World War, to become for a brief period a co-belligerent with republican Russia against the Central Powers. Under the influence of the United States, and in the hope of gaining the good-will of the Allied and Associated Powers, China pledged herself to military and maritime coöperation against Germany and Austria. Then, with the advent of the Bolsheviks to power and the inauguration of peace negotiations between Russia and the Central Powers at Brest-Litovsk, China set out on a course of action which was destined to bring her, in the wake of the Allies, into definite hostilities with Soviet Russia.

II

The ensuing three years, until the middle of 1920, constituted a period of non-intercourse. The estrangement continued, due

Murray, op. cit., Vol. II, pp. 1178–1179), and the treaty of Urga, January 24, 1916 (*Bulletin of the Laws*, No. 122, Sec. 1, May $^{10}/_{23}$, 1916; MacMurray, *op. cit.*, Vol. II, pp. 1259 ff.).

[5] Cf. the convention of Petrograd, July 3, 1916, and the secret treaty of the same date (*Bulletin of the Laws*, No. 190, Sec. 1, July $^{12}/_{25}$, 1916, and MacMurray, *op. cit.*, Vol. II, pp. 1327–1328). Further details as to the negotiations are given in the *Russkoie Slovo*, April $^{1}/_{14}$, 1916 (Cf. *Bulletin Périodique de la Presse Russe*, No. 7, May 12, 1916).

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to the implicit faith of China in the promises and programs of the Allied governments, with whose fortunes she had associated hers in the critical days of the war. With their aid, it is true, she extinguished the legal servitudes of extraterritoriality which Germany[6] and Austria[7] had imposed upon her, and although she suffered disillusionment at Versailles, and despairingly saw German "rights" in Shantung transferred to Japan, she had hitched her wagon to the Allied constellation and saw little to gain from linking her fortunes to the new Red star of Moscow. For that reason, during the early years of the founding and consolidation of the soviet régime in Russia, China remained immune to the repeated proffers of friendship made by the communist commissars. Casting her lot with the anti-Bolshevik elements supported by the Allied Powers, she coöperated in their blockade of the areas controlled by the Bolsheviks, lent her support to the military expeditions in Siberia which still aimed at a restoration of the old régime, and reached an agreement with the "Whites" for the control of the Chinese Eastern Railway.[8]

For all this China need not be censured too severely; if the windows of wisdom were darkened in London, Paris, Rome, and Tokio, and the major Allies still thought it possible to control communism by the policy of the *cordon sanitaire*, it would be almost too much to expect greater wisdom in the Waichiaopu in Peking. From a legal standpoint, China was still a belligerent. She could not, without grave danger, dissociate herself from the policies which the Allied governments were supporting alike in Europe and Asia. She had acceded in principle to the abrogation of the shameful treaties of Brest-Litovsk at the time of the armistice, and had consistently, until the beginning of 1920, maintained her studied disapproval of Bolshevik tactics.

[6] Cf. treaty of Versailles, Articles 128–134.

[7] Cf. treaty of Saint Germain, Articles 113–117.

[8] The arrangement was effected at Peking on April 27, 1918, between the Chinese authorities and the shareholders of the Russo-Asiatic Bank, who laid claim to ownership of the railway. Cf. *North China Herald*, Vol. 127, p. 253, and "The Chinese Eastern Railway," *Foreign Policy Association Information Service*, Vol. II, p. 5 (February 27, 1926).

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Viewed from Moscow, China's attitude was easily explainable: to the directors of the soviet foreign office, China appeared bound, like Hector, to the chariot of Allied policy and destined to be dragged in the dust around the outer bastions of capitalist imperialism. Hence the *motif* of Bolshevik policy was to awaken China, by systematic manifestoes, to the perils of her own condition, and to proclaim to her on every appropriate occasion that only by allying her fortunes with those of revolutionary Russia could she hope for liberation from her bondage. But although the soviet government made an initial effort to open diplomatic contacts with China in the course of the winter of 1917–1918, it was foredoomed to failure,[9] and save for a formal offer of July 26, 1919, to restore friendly relations[10]—a move in the wake of China's disappointment at Versailles—no further attempts were made at direct negotiation until 1920. In the interval, China was given a free hand in Mongolia, which she endeavored to bring back under her effective control.[11]

The year 1920 witnessed a series of important changes. The recovery of Russian Turkestan and Siberia by the Red armies brought China and Soviet Russia face to face in mid-Asia. Further east, the Far Eastern Republic was established as a buffer

[9] Cf. "Les efforts et les succes de la Russie des Soviets en Chine," *L'Europe Nouvelle*, Vol. VIII, p. 948 (July 18, 1925).

[10] Cf. *Golos Rosii*, September 16, 1919, cited by A. L. P. Dennis in *The Foreign Policies of Soviet Russia*, p. 335; cf. also *Izvestia*, September 16, 1922, for the memorandum from Joffe to Wellington Koo, reiterating the program of 1919. A paraphrase is given in the *London Times*, January 15, 1920, p. 14, c. 1.

[11] Following the Russian revolution, the Chinese government took steps to reassert its authority over Outer Mongolia, using as a pretext the pan-Mongolian activities of Ataman Semenov. In the autumn of 1919 China despatched an expeditionary force to Urga under General Hsu Shu-tseng—despite the provisions of the Urga and Kiakhta conventions—and coerced the Mongol khans into acceptance of the cancellation of their autonomy (November 16, 1919). General Hsu's brutal régime of pacification, which encountered much local opposition, was, however, short-lived. After a few months of Sino-Mongol civil government in 1920, the Chinese authorities were expelled from Urga by the bands of "White" Russians, Buriats, and Mongols, led by Baron Ungern von Sternburg, on February 3, 1921. Cf. *Bulletin Périodique de la Presse Chinoise*, No. 14, pp. 4–5 (July 14, 1919); *Bulletin Périodique de la Presse Russe*, No. 95, pp. 4–6 (October 19, 1921); and the *North China Herald*, Vol. 137, pp. 300, 518, 586.

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between Russia and Japan. Once formal contact between the two governments had of necessity been established at the frontiers, the victorious soviet government proffered a series of concrete terms as the bases of peace.

On March 28, 1920, Leo Karakhan, then assistant commissar for foreign affairs, set forth, in an appeal to the Chinese people, the soviet conception of the bases of proper understanding and good faith between the two peoples. He promised that Russia would renounce the unjust treaties "obtained" by Czarist diplomacy, return without compensation the Chinese Eastern Railway as well as all the concessions previously given to Russian subjects, and negotiate a treaty of friendship to serve as a basis for future amicable relations. This triple program of renunciation, restoration, and reconciliation was simple and appealing, and although the Peking government did not openly accede to it for the time being, it presently became obvious that the policy of abstention from all contact with the Bolsheviks had collapsed and that a realistic policy more in conformity with the existing circumstances must be adopted.

Accordingly, the Chinese government ordered its provincial functionaries in Sin-Kiang to enter into a commercial agreement with Soviet Turkestan.[12] Simultaneously, the Chinese foreign office informed Prince Kudatchev, the Russian minister to China under the old régime, that he and his diplomatic personnel, as well as the consular representatives of Czarist Russia, had no longer a *raison d'être*, and that their continued presence in China might prove menacing to the existence of the republic.[13] In the face of this demand, the Russian minister could only accede. Forthwith the Chinese government seized the concessions and immovable consular property of Russia throughout the republic,

[12] The negotiations for the renewal of trade relations were consummated in July and August, 1920, receiving the approval of Peking on September 21, 1920. For the texts of these agreements cf. the *North China Herald*, Vol. 136, p. 806 (September 25, 1920).

[13] Cf. *London Times*, September 27, 1920, p. 9, c. 4, and the *North China Herald*, Vol. 137, pp. 10–11 (October 2, 1920).

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while the legation property in Peking was intrusted to the diplomatic corps.

Thus, by the end of 1920, through military successes, the soviets had forced China to abandon the policy of abstention and hostility into which she had been dragged by Allied tactics, and to start a period of protracted negotiations. These covered the ensuing two and one-half years and ended with the final *de jure* recognition of the soviet government in May, 1924.

III

The negotiations inaugurated were dual: the Chinese government authorized the reception at Peking of a special and semi-official mission from the Far Eastern Republic, headed by Yurin, who came, however, as the spokesman for Moscow as well as for Chita.[14] Simultaneously, the Peking government sent Chang Si-lin at the head of a military and trade mission to Moscow, with instructions to sound out the Commissariat of Foreign Affairs as to the bases on which it now purposed to conclude a political settlement.[15] The immediate object of both missions was to effect a working economic agreement which would permit the resumption of trade; each had ulterior objectives which were not without significance.

Chang Si-lin, while in Moscow, obtained from Karakhan a letter dated September 27, 1920, outlining the point of view of the soviet government at that time and purporting to disclose the instructions which had been given to Yurin, the negotiator of the Far Eastern Republic, on behalf of Russia. These instructions embraced seven important points in Sino-Russian relationships. First, Russia proposed to abandon her previous treaties with China and to return to China all rights, privileges, and concessions previously granted to Russian nationals. This, it will be seen, is a reiteration of the major part of the program of

[14] Cf. *London Times*, September 23, 1920, p. 7, c. 4.

[15] Cf. the *Bulletin Périodique de la Presse Russe*, No. 92 (April 29, 1921), and the *Krasnaya Gazeta*, October 3, 1920. The mission is said to have been authorized originally to take up matters officially, but, following the overthrow of the Anfu party in Peking, was disavowed and became unofficial. *London Times*, October 23, 1920, p. 7, c. 5. Cf. also *Soviet Russia*, Vol. IV, p. 542 (November 27, 1920).

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renunciation and restoration laid down the previous March. Second, Russia sought an agreement pledging China not to give any aid to the enemies of the soviets, and to repress their activity on her territory. This point was made the more imperative on account of the escape into Chinese territory of the various roving bands of anti-Bolshevik chieftains following the defeat of Koltchak and Wrangel. The stipulation was immediately directed against such groups as those of Baron Ungern von Sternburg, mention of whom has already been made in connection with Mongolia. Third, Russia indicated that she would consent to "the assimilation of Russians to Chinese from the point of view of jurisdiction"—a euphemism for the abandonment of Russian extraterritorial rights in China. Fourth, Russia looked to the conclusion of a commercial convention on the basis of the most-favored-nation—an interesting reminder that the soviet government had by this time begun to bethink itself of the special legal privileges conceded by China to others, and of garnering such for itself. The fifth and sixth points involved the handing over to Russia of consular and diplomatic property and the abandonment by Russia of claims to the remainder of the Boxer indemnity. Lastly, Russia proposed the conclusion of a special convention relative to the Chinese Eastern Railway, in regard to which the Far Eastern Republic should be represented and consulted.[16]

All told, the revised program which Karakhan enunciated and which Chang Si-lin brought back to Peking from Moscow was much less liberal than the program to which Russia had subscribed a few months earlier. But Chang was merely an intermediary for diplomacy, not a negotiator; his duty was simply to inform the Waichiaopu of what the Moscow commissars desired; negotiations were to be intrusted to other hands.

[16] It will be noted that when, in March, 1920, the soviet government had proposed the complete retrocession of the Chinese Eastern Railway to China, it was not fully master of the Transbaikal region connecting with the railway; by fall the Far Eastern Republic was in a position to demand participation in the railway's operation, and Moscow could insist on rights for its vassal which it would have refused for itself but a few months before.

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The endeavor of the delegation from the Far Eastern Republic was to translate Karakhan's proposals into action. Yurin announced in a note of November 30, 1920, to the Chinese Foreign Office that "the mission of the Far Eastern Republic believes it necessary to raise first of all the question of a radical revision of all the treaties and agreements entered into between China and Czarist Russia." It will be noted that "renunciation" of treaties had already been tempered and changed to "radical revision." In the ensuing negotiations, Yurin's tactics were hardly adroit; he gave reiterated evidences of friendship, but alternated these with violent protests against the Chinese provincial officials in Turkestan and Mongolia. Six months of this produced no results, and he returned to Chita in April, 1921, to take over the foreign office of the Far Eastern Republic. When he returned to Peking in July, he was received with politeness but was told to negotiate first with Marshal Chang Tso-lin at Mukden.[17]

At the root of this attitude on the part of the Waichiaopu was the fact that the Washington Conference was now in the offing, and, Mr. Hughes' attitude toward the soviet government being understood at Peking as clearly as at the American capital, the Chinese government could not afford to parley with the representatives of Moscow if it wished to stand in good favor at Washington. Yurin's mission, therefore, was a failure, and the Washington Conference had to come and go before any further overtures toward a rapprochement between Peking and Moscow could be made.[18] The wisdom of abstaining from even the appearance of negotiation with Moscow was evidenced during the conference by the kindly attitude manifested by the United States toward China. When the conference was over, the interrupted negotiations could be resumed with impunity.

In the meantime, the initiative in diplomatic conversations passed from Peking to Canton,[19] the seat of the south China

[17] On the various aspects of Yurin's mission cf. *North China Herald*, Vol. 138' p. 191; Vol. 139, pp. 84, 442, 652; and Vol. 140, pp. 312, 386.

[18] In the interim Paikes, a rather complacent functionary, was left in Peking to conduct minor negotiations.

[19] It had been reported in April, 1921, that Moscow had sent a "feeler" to the

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government. During the Washington Conference Dr. Sun Yat-sen sent a secret emissary, Chu Wu-chong, to Berlin, to Herr Von Hintze, formerly German minister to China and known to be friendly to the soviet government.[20] It would appear that Dr. Sun sought an alternative to the "policy of negotiation" being tried at Washington by effecting a political combination of Germany, Russia, and China to redress the balance of power in the Orient. The proposals involved seem to have contemplated a "triple alliance" of the three countries to force the "imperialist" powers to abandon their treaty rights. The idea of such a diplomatic combination appears to have been welcomed at Berlin, as plans were laid for Von Hintze to go to the Far East.[21] Upon the overthrow of Dr. Sun in the middle of 1922, however, the mission was abandoned.

By May, 1922, Moscow believed the occasion propitious for reopening negotiations. The attempt to negotiate through the emissary of a puppet republic had proved futile; to counterbalance the efforts made on behalf of China by the so-called "imperialist" powers at Washington, the soviet government itself must act with more adroitness and greater authority than Yurin. Hence, following the reception of another Chinese mission at Moscow,[22] Chicherin selected Adolph Joffe—one of the most skilled soviet diplomats, the negotiator of Russia's principal settlements with her western neighbors, and the man who had made the Russo-German alliance of Rapallo possible—to head an imposing mission to Peking. It went with an abundance of funds at its disposal.

Although the Far Eastern Republic had already intrusted its foreign affairs to the Russian Soviet Republic at Genoa and

Canton government, suggesting (1) mutual recognition, (2) resumption of commercial intercourse, (3) the spreading of bolshevism by the Cantonese, and (4) financial assistance to Canton by Moscow. Cf. the *North China Herald*, Vol. 139, p. 11 (April 4, 1921).

[20] *Ibid.*, Vol. 145, pp. 3, 9 (October 7, 1922), for the correspondence involved and Dr. Sun's commentaries.

[21] The possible connection of this project with the Russo-German alliance consummated at Rapallo is not without interest.

[22] Cf. *Izvestia*, May 21, 1922, and *Bulletin Périodique de la Presse Russe*, No. 105 (July 8, 1922).

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elsewhere, it was deemed best, for the sake of appearances, to associate with Joffe a separate envoy from Chita, Pogodin, who became merely an interested onlooker in the negotiations between Joffe and Wellington Koo. Reviewing Moscow's previous endeavors to come to an understanding with China, and declaring that Russia was "still animated by the same sentiments of exceptional sympathy and friendship for the Chinese people," Joffe proposed once more the opening of negotiations on all questions concerning the two countries. Koo, however, felt that this ostensible generosity was not the equivalent of the pledges of Karakhan's previous programs; hence, in accepting the proposal, he explicitly insisted that Joffe bear in mind these pledges, which he affected to regard as renewed.[23] Here was an initial evidence of variant interpretation which widened as the negotiations proceeded, and Joffe, becoming a strict constructionist, sent note after note to the Waichiaopu relating to the Boxer indemnity, the Chinese Eastern Railway, and allied topics.[24] Failing to secure prompt recognition from Koo and the feeble President Li, Joffe left for the Chang-chun conference with Japan, only to find, on his return, differences of principle between himself and Koo so great that no amount of parleying could reach common ground.

It would appear that Joffe, by following a policy of bluffing, granting indiscriminate interviews, flooding the press with communiqués, and threatening military interventions—the same policy that had discredited Yurin—showed himself unfit as a negotiator. At last, recognizing his failure to extort concessions or come to terms with the Peking government,[25] he left for Shanghai to negotiate with the Cantonese, and came to an agree-

[23] Cf. *Bulletin Périodique de la Presse Russe*, No. 111 (October 18, 1922); *Izvestia*, September 16, 1922; and *London Times*, September 21, 1922, p. 11, c. 5.

[24] One of Joffe's projects was to tie up Russian Turkestan to Eastern Siberia by a vast system of railway construction reaching from Ferghana to Vladivostok via the Hoang-Ho valley and the Peking-Kalgan railway. This was variously received at Peking, according to rival accounts, and seemed to Koo to savor of the railway imperialism of Czarist days. Cf. *L'Europe Nouvelle, loc. cit.*, at p. 950; *Izvestia*, August 22, 1922; and *Bulletin Périodique de la Presse Russe*, No. 109 (October 4, 1922).

[25] Cf. *North China Herald*, Vol. 146, p. 208 (January 27, 1923).

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ment with the nationalist party and Dr. Sun on the principle. underlying their respective actions in matters of foreign policys

In a press *communiqué* of January 27, 1923,[26] Joffe and Sun agreed that the establishment of communism in China was and would be impossible until China had recovered her national unity. This admission, so damaging to Russia, was coupled with the assurance of the warmest sympathies of Russia for China. Second, Joffe reiterated to Sun that the principles of Karakhan's declarations were still proffered in good faith by the soviet government. Third, as to the Chinese Eastern Railway, the two agreed to the idea that Chang Tso-lin should participate in a special convention, but decided that an immediate agreement was necessary as a *modus vivendi* to safeguard the "true rights" and special interests of both parties. Finally, Joffe disclaimed any soviet designs on Mongolia, but held that the presence of soviet troops there[27] was necessary to prevent disorder.[28] All told, the declaration showed an agreement in principle between Joffe and Dr. Sun on the main points that still separated Moscow and Peking. It further marked a clear orientation of the Canton government toward Moscow, showing that Moscow's second overture had elicited a cordial response. From this point on, the commissars at Moscow could be assured that, whatever their success in the Forbidden City, they could bank upon advancing their fortunes in China by allying their vigorous anti-imperialist policy with the fortunes of the movement for national liberation.

[6] *Ibid.*, p. 289 (February 5, 1923); for the text of the agreement cf. also the *London Times*, January 27, 1923, p. 9, c. 2.

[27] After the capture of Urga (cf. note 11), Baron Ungern von Sternburg headed for some months an irregular Russo-Mongol "White" government in Mongolia. With the complete reconquest of Asiatic Russia, soviet troops invaded Mongolia, annihilated Baron Ungern's bands, and executed their leader. The Red troops stayed in Mongolia partly to protect the Far Eastern Republic and partly to give Moscow leverage against Peking, which was too friendly to "White" elements to suit the soviet government. Meanwhile, a "People's Revolutionary Government of Mongolia," organized along soviet lines and supported by proletarian elements friendly to Moscow, was established at Urga under the protection of the Red armies. Cf. *Bulletin Périodique de la Presse Russe*, No. 95 (October 19, 1921), and No. 105 (July 8, 1922). Cf. also *Izvestia*, May 31, 1922.

[28] *Bulletin Périodique de la Presse Russe*, No. 117 (March 9, 1923).

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The third important mission to China, and the one destined to be the most successful, was that undertaken by Karakhan. As the inaugurator of the distinctive policy of the soviets toward the countries of the Orient in 1920—a policy based on national self-determination and liberation of the native races from foreign, "imperialist" control—Karakhan had proved his mettle in dealing with the peoples of Afghanistan, Persia, and Mongolia.[29] Lesser negotiators had failed at Peking; here was a dramatic opportunity for him to succeed in persuading China to cast in her fortunes with the newly-formed Union of Socialist Soviet Republics. On the eve of his departure for Peking, Karakhan characterized the outstanding questions to be adjusted between the two countries as, first, the regularization of relations with China, with particular reference to the Chinese Eastern Railway (then still manned by "White" Russians), second, the clearing up of the legal situation of soviet citizens in Chinese territory, and third, the creation of conditions favorable to the development of economic and commercial relations between China and the Soviet Union.[30]

Repeating with more adeptness the policy of pamphleteering and banqueting inaugurated by Joffe, Karakhan made tactful use of every opportunity to reiterate the objects of his mission. "It was no longer, as in 1920," wrote a French critic, "the pure and simple renunciation of the rights and privileges which Russia heretofore possessed in China. It was a formal alliance between the two peoples, directed against their 'common oppressors'—the 'capitalist and imperialist powers,' France, Great Britain, the

[29] A small "autonomous republic of the Buriats and Mongols" had been created on January 9, 1922, within the Russian Soviet Republic, but intended to include as many of the Buriat and Mongol groups in the Far East as possible. In June, 1923, this was raised to a full-fledged republic, thereby making a double bid for the union of all Mongol peoples—(1) the political union, for which such a republic furnished a nucleus, and (2) the military and economic union which existed in fact, in virtue of the Russian occupation of Mongolia. Meanwhile efforts were made to improve the means of communication into occupied Mongolia, while trade between occupied Mongolia and China was subjected to vexatious restrictions. Cf. *Izvestia*, January 12, 1922, and June 19, 1923.

[30] Cf. *Bulletin Périodique de la Presse Russe*, Nos. 124 (September 2, 1923), and 126 (October 25, 1923); also *Izvestia*, August 3 and September 7, 1923.

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United States, and Japan."[31] In short, the purely passive, abnegative policy of a struggling soviet government was being transformed into a program of positive and cordial collaboration between a well-knit Union and China.

Karakhan's ultimate success was not easily attained. It soon became obvious that the Waichiaopu was following a policy of diplomatic attrition, being fearful of anticipating the Washington Conference Powers in any premature *de jure* recognition of the Soviet Union. Hence, on one pretext or another the inception of formal negotiations was left until Great Britain and Italy had acknowledged the new masters at Moscow. Then, rapidly, Wang Cheng-ting, the Chinese foreign minister, and Karakhan made their respective views clear.[32] In these discussions, the question of the future status of Mongolia, of the Chinese Eastern Railway, and of Orthodox Church properties in China loomed large and caused repeated controversy. But by dint of realistic concessions, especially regarding Mongolia, a final agreement was initialled on March 14, 1924.[33] For the moment, it seemed that recognition and a settlement were near, when suddenly Wang was disavowed by the Peking cabinet, as a result of one of those inexplicable idiosyncrasies of Chinese politics and of a virtual ultimatum from Karakhan, and Wellington Koo once more took the helm. Karakhan was thus left to face Koo, much as Joffe had been

[31] Contrasting Czarist and soviet policy on his arrival in Peking, Karakhan declared that the soviet government based its policy on "respect for the sovereignty of peoples, and the absolute repudiation of all territorial or other aggrandizement at the expense of other nations." To defend her interests and rights, he declared, China should be strong and powerful, "endowed with a redoubtable army," whereas the imperialistic powers wished to make of China "a new Sick Man," without an army, a prey to internal dissensions, and incapable of resisting attacks from abroad" (*L'Europe Nouvelle*, *loc. cit.*, p. 951). The significance of Karakhan's remarks, in view of the mission then being undertaken by Borodin at Canton, at the invitation of Dr. Sun Yat-sen, has recently become evident from the materials disclosed by the raid on the soviet embassy in Peking last April. It would appear that the lessons from Joffe's interview with Dr. Sun had already been taken to heart by the commissars—and the Komintern—in Moscow.

[32] For the text of Karakhan's initial terms cf. the *North China Herald*, Vol. 150, p. 274 (February 23, 1924); for the Chinese terms, *ibid.*, p. 354 (March 8, 1924).

[33] For the text of the agreement cf. the *North China Herald*, Vol. 150, p. 433 (March 22, 1924).

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compelled to do, and a final settlement was necessarily delayed. The two quarreled and engaged in personalities at times, but negotiated secretly, hoping to face the diplomatic corps at Peking with a *fait accompli*. Despite an attempt on his life and veritable ultimata from Karakhan, Koo persevered in his endeavor to reach an equitable understanding. The negotiations were secretly concluded at the instance of the president, Tsao Kun, and the resulting agreements were made known on May 31, 1924. With their signature, Karakhan's mission was accomplished and the ruptured relations between Moscow and Peking were finally and formally renewed.

The Sino-Russian settlement is significant as a comprehensive attempt on the part of both China and the Soviet Union to adjust their relations to the exigencies of reality and to crystallize the bases of those relations into legal principles. The settlement embraced a treaty of amity and friendship, an agreement for the provisional management of the Chinese Eastern Railway, and seven declarations clearing up miscellaneous points in the relations of the two countries.[34] Of these, the treaty is by far the most important. By its terms, normal diplomatic and consular relation between the two contracting parties were immediately re-established, implying the *de jure* recognition of the Soviet Union by China.[35] In consequence of the resumption of relations, consular and diplomatic property was restored to the Russian government (much to the chagrin of the diplomatic corps at Peking), and Chinese and Russian consulates were gradually reopened in Russia and China respectively.[36]

[34] For the official English text of these treaties and declarations cf. the *American Journal of International Law*, Vol. 19, Supplement, pp. 53–62. A French version is given in *L'Europe Nouvelle*, Vol. VII, pp. 960–964 (July 26, 1924).

[35] This was a great diplomatic success for Karakhan, who was presently made the ambassador of the Soviet Union to China. It meant the first recognition of the Union by an Oriental state, preceding by six months the recognition finally obtained from Japan. China cannot, however, be said to have shown undue boldness in this move, as Great Britain, Germany, and Italy had, as noted above, already recognized the Soviet Union and France was engaged in informal conversations to that end. Cf. *Bulletin Périodique de la Presse Russe*, No. 133 (July 2, 1924), and *Izvestia*, June 1, 8, and 12, 1924.

[36] Cf. *Izvestia*, October 23, 1925, and *Bulletin Périodique de la Presse Russe* No. 148 (November 7, 1925) and No. 149 (December 5, 1925).

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By the terms of the treaty "all conventions, treaties, agreements, protocols, contracts, etc.," concluded between China and Czarist Russia were annulled and were to be replaced by new ones "on the basis of equality, reciprocity, and justice, as well as the spirit of the declarations of the soviet government of the years of 1919 and 1920" (Article iii). The Soviet Union undertook to regard as null and void all Czarist treaties with third parties affecting China; while each government announced that it would not, in future, undertake engagements prejudicial tc the rights and interests of the other (Article iv). Recognizing Outer Mongolia as "an integral part of the Republic of China," and promising respect for Chinese sovereignty therein, the soviet government pledged eventual withdrawal of soviet troops from the region (Article v), but in terms so loosely phrased as to be easily evaded in practice, as subsequent events have abundantly shown.

Of special significance was the pledge of both governments not to permit within their respective territories the existence or activity of organizations or groups aiming at the violent overthrow of the government of the other party, nor to engage in propaganda against the political and social systems of the other (Article vi). With numerous "White" Russian elements in China, the obligation of the first clause fell heavily upon Peking,whereas the onus of the second fell upon Moscow, to restrain communist propaganda—a rather impossible task for even an opportunist government.

Subsequent clauses provided for a fresh delimitation of frontiers (Articles vii–viii), the administration of the Chinese Eastern Railway as a purely commercial enterprise (Article ix), a renunciation of all Czarist concessionary rights (Article x), and of the Russian share of the Boxer indemnity (Article xi). They also stipulated the relinquishment of rights of extraterritoriality and consular jurisdiction (Article xii), the negotiation of a commercial treaty and a customs tariff "in accordance with the principles of equality and reciprocity" (Article xiii), and the mutual settlement of pecuniary claims (Article xiv).

It would appear from analysis of the treaty and a comparison of it with other soviet settlements with foreign powers, that the

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agreement was entirely in keeping with the trend of soviet policy with regard to backward countries, and that, save for the provisions as to Mongolia and the Chinese Eastern Railway, it embodied the gist of Karakhan's original renunciation-restoration-reconciliation program, tempered by Chinese ideas of property, equality, and reciprocity. It is, then, the hybrid of the Soviet and Chinese nationalist programs, and, as such,unique in the treaty history of the Far East.

The declarations accompanying the treaty settlement were mainly technical elaborations of the promises made in the treaty proper. Outstanding among them was the third, declaring China's refusal to recognize as valid any treaty, agreement, etc., concluded between Russia since the Czarist régime and any third party or parties, affecting the sovereign rights and interests of China. This was intended to give China a distinct leverage in dealing with the soviet government. In return, however, China, by the fourth declaration, agreed not to cede to anyone else the rights abandoned by the soviet government. By the fifth declaration China pledged to use for educational purposes the remitted Boxer indemnity, therein following American practice. The sixth declaration definitely declared soviet nationals amenable to Chinese judicial jurisdiction, a condition which, contrary to the expectations of most western countries, does not seem to have had adverse effects in its workings.[37]

Such was the settlement whereby China and Soviet Russia came to terms following the disruption of their relations by war and revolution. It was a settlement made possible, on the one hand, by the military success of the soviets in reconquering the whole of the old Russian domain in Asia, and, on the other, by

[37] Little difficulty other than that resulting from congested dockets and limited prison facilities has been encountered by soviet nationals, according to the testimony of M. Pergament, legal adviser to the soviet embassy in Peking. In the opinion of an American expert, however, this has been due to the leniency of Chinese courts toward Russian offenders rather than to any other cause. Cf. H. S. Quigley, "Extraterritoriality in China," *American Journal of International Law*, Vol. 20, p. 64. The problem has been complicated by the presence on Chinese soil of several hundred thousand Russians who are the avowed and bitter enemies of the soviet régime. Many of these have been naturalized by the Chinese government.

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the natural divergence of policy between China and her war-time allies, a divergence accentuated by the long delays in the ratification of the Washington treaties. It marked in a distinctive fashion a formal step forward in the recovery of China's national rights, and, as such, has undeniably been instrumental in modifying, to an appreciable extent, the tenacity with which the treaty powers clung to their conventional and concessionary rights. But it was not only another stage in the policy of recovery; it marked an objective realization of the community of Russian and Chinese interests and policies in the Far East. For Russia it meant the widening of the breach which nationalist resentment was bringing about between China and the treaty powers, and the creation of a potentially effective political bloc in Far Eastern diplomacy; for China, it meant the opening of a new period in her struggle for liberation from her servitudes to Occidental powers.

IV

The Peking settlement may be said to represent the equipoise of forces as between Russia and China at the time of its signature. But such a settlement could not remain static, and a continuous adjustment to the changing trend of events in each domain was predestined. For Russia, the basic objectives of policy have been two: the security of her territory and the spread of her revolution. The execution of these policies has centered around the foci of Mukden, Urga, and Canton. For China, the problems of policy have not been dissimilar: first, the spreading of the democratic revolution has, in the eyes of her nationalist leaders, been the principal objective, through the attainment of which would come, second, solidity, stability, unity, and liberation, while to the northern leaders the principal concern has been the maintenance —with outside aid if need be—of precariously acquired rights and the securing of a jeopardized political position. This duality of objectives has involved a separate policy on the part of each government in China and a dualistic policy of a necessarily two-faced character on the part of Moscow. In consequence, that policy has assumed different aspects in relation to the particular regions to which it was applied.

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In Manchuria, the Soviet Union has dealt belligerently whenever it has had to face Chang Tso-lin, and the tale of the Chinese Eastern Railway since the Peking settlement has been replete with "incidents," "impasses," and wrangling negotiations. The drafting of the Mukden Agreement of September 20, 1924,[38] merely furnished the occasion for the first of the clashes between the Soviet Union and the Manchurian war-lord; the two seem to represent the permanent antagonism of the whole nineteenth-century railway imperialism in eastern Asia under new forms and masked by a new ideology. Hence the subsequent clashes over the personnel, the schools, the river fleet, the management of the railway, and the intermittent threats of Moscow to liquidate the entire matter with the aid of the Red army.[39] The end is not yet. The latest phases of the successively belligerent or quiescent quarrel and the manoeuvering for strategic diplomatic position relate to the tangled skein of intrigue surrounding the Russo-Asiatic Bank and its presumptive beneficial ownership of the railway, as represented by Czarist securities held in French hands—the treaty of Peking to the contrary notwithstanding.[40] Despite temporary adjustments of a palliative character, it is hard to believe that the present status of forces in and on the

[38] The text of the agreement is given in the *China Year Book* (1925), pp. 797–800. Cf. also *Foreign Policy Association Information Service*, "The Chinese Eastern Railway," Vol. II, pp. 6–9 (February 27, 1926), and *Bulletin Périodique de la Presse Russe*, No. 137 (November 22, 1924).

[39] The whole problem of the Chinese Eastern Railway is, of course, too complex to be treated here. On the various Sino-Soviet crises concerning the railway cf. the following sources: *Foreign Policy Association Information Service*, "The Chinese Eastern Railway," Vol. II, pp. 9–10; *Bulletin Périodique de la Presse Russe*, No. 154 (February 9, 1926); *Pravda*, February 2, September 4 and 9, 1926; *London Times*, September 23, 1926; and *L'Europe Nouvelle*, Vol. IX, pp. 1385–1386 (October 2, 1926).

[40] It is likewise impossible to touch here on the numerous ramifications of the Russo-Asiatic Bank controversy. It is safe to say, however, that the soviet government, having attempted in the treaty of Peking to outlaw all other claims than those of the contracting parties to the railway, would not recognize any agreement regarding the railway entered into by any other powers with any faction in China, such as represented, for example, by Chang Tso-lin. On the Russo-Asiatic Bank cf. *L'Europe Nouvelle*, Vol. IX, pp. 1538–1540 (November 6, 1926); *Pravda*, September 16, 1926; and *Bulletin Périodique de la Presse Russe*, No. 137 (September 30, 1926), and No. 158 (November 20, 1926).

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borders of Manchuria is regarded as final by either Chicherin or Chang Tso-lin, and more controversy may be expected to develop, although it is likely to be kept within such bounds as will preclude Japanese intervention.

In Mongolia a different policy has been necessary. A region successively under Japanese, North Chinese, and "White" Russian influences from the days of the twenty-one demands to the extermination of Sternburg could not lightly be left to the caprices of Peking's statesmanship, nor to the purchasable loyalties of native khans. Hence, with the Red army still in occupation of Urga, it was good policy for the Soviet Union to foment revolution and awaken in a slumbering proletariat the ideals of national self-determination. A well-prepared *coup d'état* at a psychological moment—and the Mongolian Republic was born,[41] to be gradually absorbed *de facto* into the politico-economic system of the Soviet Union, despite the unctuous phraseology of the Peking treaty. After three years of soviet reconstruction, Mongolia has definitely become a bulwark of soviet power and a link in the soviet system of penetration into the Orient.[42]

The third center of soviet activity has been Canton. Once legal leverage had been acquired at official Peking, it was important for Russia to intrench herself at Canton and to make use of the

[41] *Pravda*, June 21, 1924. Official proclamation of the People's Republic of Mongolia did not take place until July 8, 1924. In November, the constitution of the new Mongolian state was promulgated (*Pravda*, November 29, 1924). It is, from its bill of rights through its detailed administrative machinery, a Mongolian replica of the constitution of the Russian Soviet Republic. Cf. *Bulletin Périodique de la Presse Russe*, Nos. 134 (July 19, 1924); 135 (September 11, 1924); and 138 (December 23, 1924), which contains an analysis of the constitution.

[42] On March 6, 1925, Karakhan notified the Waichiaopu that the Red troops had been withdrawn. Chicherin described the situation at that time by saying that "the soviet government recognizes Mongolia as a part of the whole Republic of China, enjoying, however, autonomy so far-reaching as to preclude Chinese interference with internal affairs and to permit the establishment of independent relations by Mongolia" (*Izvestia*, March 6, 1925). "The People's Republic of Mongolia," wrote a French observer, "although outside the framework of the Union of Socialist Soviet Republics, evolves, notwithstanding, in the order followed by the former People's Republics of Bokhara and Khorezmia, which later became soviet republics, then socialist, and were incorporated, after their dissolution, in the soviet republics of Central Asia" (*Bulletin Périodique de la Presse Russe*, No. 139 (January 31, 1925)).

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nationalist movement, as she had done in Afghanistan, Central Asia, and elsewhere, to pursue her policy of national liberation as a phase of the larger world revolution that is still planned in the Kremlin. Hence, while installing Karakhan as the official ambassador at the *de jure* capital, Moscow simultaneously sent forth to Canton, increasingly the *de facto* center of nationalist authority, an able commissioner in the person of Borodin. To maintain external calm and official connection with the Waichiaopu, while mobilizing the student intelligentsia and "boring from within" at the vitals of the Peking government, was the difficult rôle assigned in the diplomacy of Moscow to Karakhan, and it must be admitted that the sleek Armenian commissar-ambassador played his cards well. So long as Canton was merely a center of sputtering rebellion, Russia could well afford to let her agitators, like Borodin, utilize this divine discontent in furtherance of her own aim of evicting the "imperialist" powers from China. So long as political authority remained *de facto* in the North, it was wisdom to have Karakhan in Peking. So Karakhan remained, striving to detach the "Christian" general, Feng Yu-hsiang, from the northern cause and to employ him in the services of the nationalist revolution. During this period, while Feng was in power in Peking, Karakhan was able to induce the Waichiaopu to adopt a policy of vigorous self-assertion, as at the time of the blockade of Tien-tsin in March, 1926.[43] But with the change of fortunes which sent Feng flying to Kalgan, on the outskirts of Mongolia, a policy of full-fledged support to Peking was seen to be futile, since an open "vacancy of power" existed in Peking, and the rival tuchuns could not be trusted. Hence the recall of Karakhan "on leave" to Moscow could have but one explanation. He was too valuable a diplomatist to waste upon a hopeless political situation, and could be of more use in command in Moscow than in masterly inactivity in Peking. It thereupon became Karakhan's task at Moscow, where Feng had taken refuge, to reach an understanding with the general, pledging him

[43] Cf. Nicholas Roosevelt, "Russia and Great Britain in China," *Foreign Affairs*, Vol. 5, pp. 80–90 (October, 1926), at p. 89.

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to coöperation with the plans of the soviet government, after which he was abundantly supplied with war materials and subsidized out of the soviet coffers.[44]

Meanwhile, from 1923 to 1926 the spreading of the revolutionary spirit, the socializing of the revolution, the actual indoctrination of Chinese youth, and even a fringe of the Kuomintang party, with the principles of communism, the whipping into shape of the nationalist armies for the final drive against Peking which was, in the soviet scheme, to consummate the movement for Chinese national unification and liberation, were left to Borodin and General Galen, with whom Karakhan kept in the strictest liaison from the recesses of the soviet embassy.[45]

After Karakhan's return to Moscow, soviet diplomacy could scarcely dissemble or hide the inescapable contradictions between professed friendship to Peking and actual support of Canton. The Soviet Union, openly threatening in Manchuria, securely entrenched in Mongolia, and in working alliance with the South, could only "smile and smile and be a villain" in Peking. Chernykh, the chargé who succeeded Karakhan, was merely a complacent soviet bureaucrat who took his orders from Borodin and was a go-between for Feng Yu-hsiang and the southern leaders of the Kuomintang. After the establishment of the nationalist government at Hankow, Chernykh was regarded, of necessity, as a stop-gap envoy to hold the fortress of sovietism in Peking until the tidal wave of nationalist victory should reach the Forbidden City. This seems to have been the design of Moscow, which Chang Tso-lin's raid on the soviet embassy last April not only clearly revealed but abruptly terminated.

Once the complicity of the soviet government was established by documentary evidence,[46] the Commissariat for Foreign Affairs

[44] This, though long surmised in Peking, was not clearly proved until disclosed by the documents seized in the raid on the soviet embassy in Peking, April 6, 1927. Cf. "The Soviet Plot in China" (published by the Peking Metropolitan Police), Documents 4, 5, 8, 12, 14, 15, 16, 17, 18, 19, 23, 24, 25, 26.

[45] *Ibid.*, Documents 7, 9, 10, 11, 13, and, primarily, 28.

[46] *Ibid.*, Documents 1, 2, 3. Cf. also *North China Herald*, Vol. 163, pp. 63–64 (April 9, 1927).

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had in fact no choice except to protest ostentatiously[47] and withdraw Chernykh without actually destroying the legal ties still binding it to Peking. It was no longer possible for the soviet government to follow its policy of duplicity in China, and its every sympathy bound it to the new concentration of forces at Hankow. Even before the celebrated raid, the commissars had commissioned Comrade Aralov, fresh from a diplomatic success at Riga,[48] to proceed to Hankow as an "unofficial representative;" after the raid, action of this sort was an imperative necessity. With a representative of the Union unofficially on hand, Borodin could afford to retire to the background and, for a while at least, play the rôle of the man in the shadow.

It is not material here to discuss the inner manoeuverings of the Nanking and Hankow factions of the nationalist camp as to the rôle which communism should play in the Kuomintang party. Let it suffice for our purposes to note that the principle formulated by Joffe and Sun Yat-sen, that the movement for national reunification must first be completed before communism can be implanted, appears to remain valid. For the time being, even as in Russia itself, communism has been forced to make a "strategic retreat" in the face of nationalist sentiment. Whether that retreat is to be permanent, as in Russia, remains for the future to disclose. At all events, the apostles of the Communist International have thus far refused to admit their discouragement.[49]

[47] For the text of the U.S.S.R. protest, cf. *North China Herald*, Vol. 163, pp. 97 ff. (April 16, 1927). A French text of the protest is found in *L'Europe Nouvelle*, Vol. X, pp. 608–609 (May 7, 1927). For the Chinese rejoinder cf. *North China Herald*, Vol. 163, p. 145 (April 23, 1927). The Waichiaopu, which had never sent a formal ambassador to Moscow, although it decided to appoint one, thought it best to keep a chargé at the soviet capital notwithstanding the withdrawal of the soviet mission.

[48] Cf. *London Times*, March 10, 1927, p. 13, c. 6.

[49] Cf. *The Communist International*, Vol. IV, No. 10 (June 30, 1927), p. 188, giving the views of the May *plenum* of the Executive Committee of the Communist International, and p. 200, where Stalin reviews "The Revolution in China and the Tasks of the Communist International." This note is further developed by Bukharin in a survey of "Developments in the Chinese Revolution," *ibid.*, No. 11 (July 30, 1927), p. 210.

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V

Surveying the decade in retrospect, three completed phases of Sino-Soviet relations are evident: (1) the period of estrangement (1917–20), singularly unfortunate for both Russia and China; (2) the period of negotiation (1920–24), of conscious readjustment of both parties to a changed international order; and (3) the period of official reconciliation and readjustment (1924–27), marking a notable advance in China's recovery of her rights. The last period was definitely closed with the withdrawal of Chernykh, and a fourth cycle of events, replete with possibilities, has been begun. The question of what it holds for the future relations of China and the Soviet Union is left for the next decade to reveal. Certain trends, however, may be noted. The new period is admittedly one of transition, in which the various social phases of the Chinese revolution will play no mean part in molding the relations of the two countries. It is a phase in which the oscillations of the Chinese populace between the ideology of social revolution and that of bourgeois nationalism will be a determining factor. If China turns to the left, and the agrarian and social character of her revolution looms large, she may be inclined to follow both the pattern and the discipline of Moscow, as hoped by both the commissars and the Komintern. If, on the other hand, China turns to the right, if nationalism flows too strong, she may discard the ideology of social revolution, and, conscious of new national strength and a unity achieved with the assistance of Moscow, may turn her back upon the Soviet Union to pursue an independent course of national development and foreign policy. Such a culmination would constitute a wide departure from Moscow's plans and wishes.

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CONSTITUTIONAL LAW IN 1926-1927

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1926

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A. QUESTIONS OF NATIONAL POWER

I. EXECUTIVE POWER

a. The President's Power of Removal

The most conspicuous constitutional decision rendered by the Supreme Court during its 1926 term, or for many a preceding term, was in the case of Myers v. United States.[1] It is here held that the power of the President to remove executive officers appointed by him with the consent of the Senate cannot be restricted by Congress. On the question of the removal of such officers the Constitution is entirely silent. It is an interesting commentary on the process by which we make constitutional law that a problem as important as this, a problem which was debated at length in 1789, upon which presidents have acted and congresses have passed statutes, should now, after 137 years, be definitely settled for the first time, and be settled now only because the late Mr. Myers saw fit to sue the government in the Court of Claims for his salary.

The facts in the case are simple. In 1917 President Wilson appointed Myers to a first-class postmastership at Portland, Oregon, for a term of four years. In 1920, by direction of the President, he was removed from office. A statute passed in 1876[2] and still in force provides that "postmasters of the first, second, and third classes shall be appointed and may be removed by the President by and with the advice and consent of the Senate and shall hold their offices for four years unless

[1] 272 U. S. 52. The constitutional aspects of the case have been widely discussed. The most exhaustive treatment is that by E. S. Corwin, "Tenure of Office and the Removal Power under the Constitution," 27 *Columbia Law Review*, 353. See also G. B. Galloway, "The Consequences of the Myers Decision," 61 *American Law Review*, 481; a note by J. A. Fairlie, 21 *Illinois Law Review*, 733, and two unsigned notes in 25 *Michigan Law Review*, 280, and 36 *Yale Law Journal*, 390. See also the brief article by T. R. Powell, "Spinning Out the Executive Power," *New Republic*, November 17, 1926, p. 369.

[2] Act of July 12, 1876, 19 Stat. at L. 80.

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sooner removed or suspended according to law." The removal of Myers was never referred to the Senate for its consent. Nor was anyone appointed by the President to fill Myers' unexpired term, a fact which is significant since the senatorial confirmation of such an appointment would constitute consent to the removal of the appointee's predecessor.[3] Myers protested against his removal in every way open to him at the time, and when the four-year period for which he had been appointed had expired he sued in the Court of Claims for the salary of which his removal had deprived him. His position was clear and definite, i.e., his removal by the President was in violation of the act of 1876. The question of the validity of that act was squarely raised on an appeal to the Supreme Court from the judgment of the Court of Claims against Myers.[4]

The Supreme Court clearly appreciated the importance and difficulty of the case. After first argument in December, 1924, the case was assigned for re-argument in April, 1925. The Court invited Senator Pepper of Pennsylvania to present a brief as *amicus curiae* for the appellant. The case was argued for the government by Solicitor-General James M. Beck. The decision rested upon a six-to-three vote of the Court. The opinion of the majority was written by Chief Justice Taft and occupies seventy-one pages in the official reporter, while Mr. Justice McReynolds wrote a sixty-one page dissenting opinion and Mr. Justice Brandeis a fifty-six page dissent. A half-page dissent was filed by Mr. Justice Holmes.[5] It was pointed out during the argument that this is the first case in which the government through the Department of Justice has appeared in the Supreme Court to attack the constitutionality of an act of Congress.

The decision of the Court that Congress may not restrict the President's power to remove officers appointed by him with senatorial consent is supported in Chief Justice Taft's long opinion upon two main grounds. One of these is historical, i.e., that the long-established practice of the government has been in accord with the Court's decision; the other is constitutional or inferential, i. e., that the removal power is part of the President's broad grant of executive authority which under the doctrine of separation of powers may not be restricted by Congress. Each of these arguments may be briefly summarized.

[3] Wallace v. United States, 257 U. S. 541.

[4] 58 Ct. Cl. 199. The Court of Claims gave judgment against Myers on the ground of undue delay in suing. The constitutional question was not considered.

[5] These opinions, together with briefs of counsel and reports of the oral arguments, are printed as Senate Document 174, 69th Cong. 2d. Sess.

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The historical argument is built primarily upon what the Chief Justice calls the "decision of 1789." This "decision" took the form of a vote or series of votes in the First Congress upon the establishment of a department of foreign affairs. It was originally voted in the House that such a department be created under a secretary appointed by the President with the advice and consent of the Senate, and removable by the President. After extensive debate this was amended in two ways. First, a clause was added clearly implying unrestricted removal power in the President alone by alluding to vacancies created by the exercise of such power.[6] Second, the clause granting the power of removal to the President was stricken out, on the ground that such a grant implied that without it the President would not have the power. The Senate, by a close vote, concurred in these actions. By this "decision," declares the Chief Justice, Congress recognized and established the exclusive and untrammeled power of the President to remove executive officers whom he appoints. "It was soon accepted as a final decision of the question by all branches of the government." Hamilton, Kent, Story, and Webster are quoted as concurring, not in each instance in the correctness of the "decision of 1789," but in the belief that that action finally determined the law of removals.

Some difficulty arises from part of Marshall's opinion in Marbury v. Madison.[7] If either Jefferson or Marshall believed that the President could remove Marbury from office, the whole controversy as to the delivery of the latter's commission would have been futile and beside the point. But Marshall rejected this view and declared: "As the law creating the office gave the officer a right to hold for five years, independent of the executive, the appointment was not revocable, but vested in the officer legal rights which are protected by the laws of his country." Chief Justice Taft, however, dismisses this statement as obiter dictum, suggesting that even if it was not dictum it has been overruled by later decisions of the Court, and that, anyway, Marshall's mature judgment on the matter was expressed in 1807 in the "Life of Washington" and supported the "decision of 1789."

Furthermore, it is pointed out, later congresses followed and enforced the "decision of 1789" for seventy-four years. The other departments were created by the same formula which was applied to the

[6] This clause referred to a chief clerk in the department who, "whenever the principal officer shall be removed from office by the President of the United States," should have custody of the papers and records of the department.

[7] 1 Cranch 137.

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Department of Foreign Affairs, leaving the power of removal to be implied from the "silence of Congress." "Occasionally, however, we find that Congress thought it wiser to make express what would have been understood," and accordingly in several acts creating federal offices the statute specifically declares that such officers shall be removable at the pleasure of the President. But this apparent grant of the removal power by Congress is not a grant at all, but merely a description of a power already inhering in the President. This we know to be true because the Supreme Court specifically said so in 1897 in the Parsons case,[8] in which the President was held to have the power to remove at pleasure district attorneys appointed for a four-year term under a statute from which the removal clause was omitted.

There follows an analysis of the various statutes, beginning in 1866 and continuing down to date, by which Congress has apparently repudiated the "decision of 1789" by restricting the President's power to remove executive officers or even denying it altogether. Most conspicuous of these is the Tenure of Office Act of 1867.[9] After indicating that wherever the issue has been sharply presented the President has always protested against these attempted encroachments upon his power, the Chief Justice goes on to say that these later statutes were for the most part passed "during a heated political difference of opinion between the then President and the majority leaders of Congress" and that "we are certainly justified in saying that they should not be given the weight affecting proper constitutional construction to be accorded to that reached by the First Congress of the United States during a political calm and acquiesced in by the whole government for three-quarters of a century, especially when the new construction contended for has never been acquiesced in by either the executive or the judicial departments."

So much for the historical basis of the Court's decision. The constitutional argument advanced by the Chief Justice is much more important than the historical evidence just reviewed. It is perfectly clear that such power of removal as the President enjoys is an implied power. Implied from what? Implied from the general grant of executive power in Art. II[10] and the further injunction in the same article that the

[8] Parsons v. United States, 167 U. S. 324. The legislative grant of removal power is specifically held declaratory.

[9] Act of Mar. 2, 1867, 14 Stat. at L. 430.

[10] "The executive power shall be vested in a President of the United States of America." Art. II, Sec. 1, Cl. 1.

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President "shall take care that the laws be faithfully executed." By placing it on this broad ground the Court avoids the difficulties which would result from implying the removal power solely from the President's power of appointment, although it is admitted that the power of appointing provides a supplementary and supporting basis for implying the power of removal. It is clear that this argument rests upon the conviction which Mr. Taft's presidential experience undoubtedly confirmed and emphasized, that the President cannot effectively and responsibly administer his office unless he can control his subordinates through an unrestricted power of removal. Speaking of cabinet officers, the Chief Justice declares: "The moment that he loses confidence in the intelligence, ability, judgment, or loyalty of any one of them, he must have the power to remove him without delay. To require him to file charges and submit them to the consideration of the Senate might make impossible that unity and coördination in executive administration essential to effective action." He then adds: "The imperative reasons requiring an unrestricted power to remove the most important of his subordinates in their most important duties must, therefore, control the interpretation of the Constitution as to all appointed by him." To allow a senatorial check upon removals would, in short, "make it impossible for the President in case of political or other difference with the Senate or Congress to take care that the laws be faithfully executed." If it had been intended by the framers of the Constitution to allow Congress to weaken in this manner "the great independent executive branch of the government," such a power would have been "included among the specifically enumerated powers in Article I, or in the specified limitations on the executive power in Article II."

The dissenting opinions seem clearly to have the better of the argument, both in historical accuracy and in logic. In regard to the "decision of 1789" the following points are made: (1) The "decision" had no bearing upon the question of the power of Congress to control or restrict the President's power of removal; it merely held that in the absence of legislation he had the power. It seems clear that few, if any, of those voting on the issue in 1789 believed that the President had an uncontrollable power of removal. They were voting to defeat the inference that the President would have no power of removal unless granted by statute—which is very different from the view that he enjoyed such power entirely free from statutory regulation or restriction. (2) The "decision of 1789" concerned the President's power to remove the head

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of one of the major executive departments. It is very doubtful if the members of Congress looked upon such a high post in the same light in which they viewed "inferior" offices. A very sound argument supporting an unrestricted power in the President to remove cabinet officers might be built up on grounds which have little or no bearing upon a similar removal power with reference to minor functionaries. (3) The "decision" was, after all, merely a congressional opinion, not based upon a consideration of all the issues involved, nor grounded upon substantial governmental experience. It should, therefore, be given no more weight than, perhaps not so much as, the long-standing congressional practice of restricting the executive power of removal, a practice which has been embodied in numerous statutes extending over a long period of time. (4) The conclusion of the Chief Justice that Marshall's statement in Marbury v. Madison that the President lacked the power to remove Marbury was obiter dictum is flatly contradicted on grounds both of reason and of later decisions of the Court alluding to it as part of the necessary reasoning.[11] One can not read the elaborate historical argument in the dissenting opinions without feeling a keen appreciation of Senator Pepper's remark in his brief: "I appeal to the record, because when this great tribunal declares the law we all bow to it; but history remains history, in spite of judicial utterances on the subject."[12]

The dissenting justices sharply attack the majority doctrine that an unrestricted presidential power of removal must be implied from the general grant of executive authority and the duty to see that the laws are faithfully executed. While admitting that the power of removal must be deemed to exist somewhere, even though the Constitution does not mention it, they point out that the power may much more logically be implied from the congressional power to create offices and prescribe the tenure thereof than from the broad grant of executive power. The power of removing an officer is an executive function, but the power to prescribe the conditions under which this may be done is legislative, a distinction which the majority argument overlooks. Furthermore, such a rule of construction is dangerous. As Mr. Justice McReynolds says: "If the phrase 'executive power' infolds the one now claimed many others heretofore totally unsuspected may lie there awaiting future supposed necessity; and no human intelligence can

[11] McAllister v. United States, 141 U. S. 174, at 189.

[12] Even better is Professor Corwin's terse comment, *op. cit.*, 369, "what a judge cannot *prove* he can still *decide*."

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define the field of the President's permissible activities." Sound constitutional interpretation requires a strict rather than a liberal construction of executive power; or, as Mr. Justice Brandeis put it, "a power implied on the ground that it is inherent in the executive must according to established principles of constitutional construction be limited to 'the least possible' power adequate to the end proposed." It would seem clear, therefore, that the President's duty to see that the laws be faithfully executed "is a duty," to quote Mr. Justice Holmes, "that does not go beyond the laws or require him to do more than Congress sees fit to leave within his power." Or, as Mr. Justice McReynolds sums it up, "A general duty to enforce all laws cannot justify an infraction of some of them."

The difference of opinion as to the practical results of the Myers decision has also been very sharp.[13] Even the immediate legal consequences are in some doubt. It is clear that the decision prevents congressional control of the President's power to remove officers appointed by him with senatorial consent. Whether his power to remove an officer appointed by him alone is also unlimited is not settled, although the reasoning of the Court seems broad enough to apply to this type of appointment.[14] It is specifically declared in Chief Justice Taft's opinion that when Congress exercises its power of vesting the appointment of "inferior officers" in the heads of departments or in the courts of law it may control or limit by statute the removal of such officers, but that if it does not do so the President may remove them in the exercise of his general executive authority. With regard to the removal of a judicial officer under statute and not under Article III of the Constitution, Chief Justice Taft observes by way of dictum that whether such an officer "can be removed by the President alone without the consent of Congress, ... whether Congress may provide for his removal in some other way, present considerations different from those which apply in the removal of executive officers, and therefore we do not decide them." In another dictum the Chief Justice refers to the status of the great independent commissions or tribunals, such as the Interstate Commerce Commission, the Civil Service Commission, and the like, and while declaring that the President ought not to influence

[13] This is shown not only in the speculations indulged in by the justices who wrote opinions, but also in most of the articles cited in note 1, supra, p. 70 For a careful and sensible analysis of this phase of the case see H. L. McBain, "Consequences of the President's Unlimited Power of Removal," 41 *Political Science Quarterly*, 596.

[14] Professor McBain takes the opposite view, *op. cit.*, 600.

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or control their decisions, he states plainly that such decisions may properly be made a reason for their dismissal by the President. It would seem equally logical, however, to surround these quasi-judicial or quasi-legislative bodies with the same immunity from an uncontrolled presidential removal power as is enjoyed by judicial officers of the group above mentioned. The Court, it is believed, could reach such a result without doing violence to the logic of its decision of the present case.

It is the belief of the writer that, on the whole, the practical consequences of the Myers decision will be satisfactory rather than otherwise. That it enlarges the opportunity for the abuse of the presidential power of removal is obvious. That it centralizes presidential responsibility for such removals and for the entire administration of the executive branch of the government is equally obvious. The federal civil service is in no danger, since Congress can place and keep it beyond the reach of direct presidential power of removal. Even where the abuse of the removal power would be most objectionable, in the case of the so-called permanent commissions, it should be remembered that political checks, having their strength in public opinion and in the necessity for senatorial confirmation of the new appointment, are much more efficacious than the fear of judicial restraint. The modern principles of administration do not leave room for a serious quarrel with a doctrine which makes the President the actual and effective head of an administrative system of which he has always been the nominal head.

b. The President's Power of Pardon

The power of the President to commute a death sentence to life imprisonment without the consent of the accused is upheld in Biddle v. Perovich.[15] Perovich had been sentenced to death in Alaska in 1905 after various delays and respites. In 1909 President Taft commuted his sentence to life imprisonment. Perovich made two ineffectual attempts to secure a pardon, and in 1925 he sued out a writ of habeas corpus alleging that the commutation of sentence was without his consent and that since it changed the penalty to one of a different sort such consent was necessary. Until now the Supreme Court has recognized the necessity of consent to make a pardon valid. In 1833 Chief Justice Marshall declared: "A pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance. It may be rejected by the person to whom it is tendered; and if it be rejected, we have discovered no power in a court to force

[15] 274 U. S. 480.

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it on him."[16] This doctrine was cited with approval by the Supreme Court in 1915 in the case of Burdick v. United States,[17] which held that the President could not compel a man to accept a pardon offered for the purpose of breaking down his immunity from self-incrimination. In the present case Mr. Justice Holmes rejects this theory completely. He says: "A pardon in our days is not a private act of grace from an individual happening to possess power. It is a part of the constitutional scheme. When granted, it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed. . . . . Just as the original punishment would be imposed without regard to the prisoner's consent and in the teeth of his will, whether he liked it or not, the public welfare, not his consent, determines what shall be done. . . . . We are of the opinion that the reasoning of Burdick v. United States is not to be extended to the present case." Furthermore, the change in sentence here made falls within the President's power of pardon, since "by common understanding imprisonment for life is a less penalty than death." It is interesting to note that the Supreme Court has answered in this case the question so insistently raised by the late Gerald Chapman as to the necessity of the acceptance of a pardon and has answered it as the lower federal courts disposed of it in that case.[18]

II. LEGISLATIVE POWER

a. Senate's Power to Compel Attendance of Witnesses

What the Senate may have lost in possible power through the Myers decision it more than regained by the strengthening of its inquisitorial authority in the case of McGrain v. Daugherty.[19] Here it is held that the Senate may compel the attendance of a witness before one of its committees in order to secure information necessary to aid it in legislating. In February, 1924, the Senate appointed a special committee to investigate the Department of Justice and the failure of the Attorney-General to prosecute Messrs Fall, Doheny, Sinclair, Forbes, and others for alleged violations of federal law. The committee subpoenaed Mally S. Daugherty, brother of the Attorney-General, ordering him to appear with various books and records of the bank of which he was president. Daugherty ignored two such summons, whereupon the Senate authorized McGrain, its sergeant-at-arms, to arrest him and bring him before

[16] Ex parte Wells, 18 Howard 307.
[17] 236 U. S. 79.
[18] Chapman v. Scott, 10 Fed. (2d.) 156; same, 10 Fed. (2d.) 690.
[19] 273 U. S. 135.

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the bar of the Senate to answer questions. On a habeas corpus action, the federal district court held the Senate without power to compel such attendance.[20] The question of the right of one of the houses of Congress to exercise the power here claimed had never before been squarely raised. After disposing of several technical objections, the Court held, broadly, that "the power of inquiry with process to enforce it is an essential and appropriate auxiliary to the legislative function." It emphasized what had been previously held,[21] i.e., that this authority does not extend to an unrestrained prying into private affairs. But it concluded that the investigation under review was for the purpose of securing information regarding one of the departments organized by Congress, and that since the only legitimate object the Senate could have in conducting the inquiry was to aid it in legislating, it must be presumed that this was actually its object. From the theory of the case it follows that the witness may refuse to answer questions not pertinent to the inquiry or beyond the authority of the Senate to ask.[22]

b. Delegation of Legislative Power to the President

In United States v. Chemical Foundation[23] it was held that no unconstitutional delegation of legislative power to the President was involved in the sections of the Trading with the Enemy Act[24] which gave the Alien Property Custodian full power, acting under the President, to dispose of enemy properties. The President's power to determine the terms and conditions of the sales of such property was unrestricted, but this was merely the executive application of the general rule laid down by the act. The sale by the Custodian to the Chemical Foundation of various German patents was attacked in this case on a wide variety of grounds including fraud and felony, but the entire transaction is given a clean bill of health by the Court.

c. Regulation of Commerce

Under the Valuation Act of 1913,[25] as amended in 1920[26] and 1922,[27]

[20] 299 Fed. 620.

[21] Kilbourn v. Thompson, 103 U. S. 168.

[22] The doctrine of this case had been earlier announced by the New York Court of Appeals in People *ex rel* McDonald v. Keeler, 99 N. Y. 463, which is here quoted with approval.

[23] 272 U. S. 1.

[24] Oct. 6, 1917, 40 Stat. at L. 411, and later amended.

[25] Mar. 1, 1913, 37 Stat. at L. 701.

[26] Feb. 28, 1920, 41 Stat. at L. 456.

[27] June 7, 1922, 42 Stat. at L. 624.

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the Interstate Commerce Commission was required to make a careful study of the properties of all the rail carriers in the country, about 1,800 in number, and determine a "final valuation" for each which should be "prima facie" evidence in any controversy under the act. In United States v. Los Angeles & S. L. R. Co.[28] an injunction was sought by the railroad to annul this final valuation and enjoin its use for any purpose. In addition to numerous minor and technical objections, the carrier attacked the valuation on the broad basis of the principles applied by the Commission in reaching it. A decision on the merits would have been of outstanding importance as subjecting to review by the Supreme Court the soundness of the Commission's theory and procedure of valuation. But the Court held that until the valuation is made the basis of some action affecting the road the question of its correctness remains moot and the Court is without jurisdiction to pass on it. When the valuation comes to be actually applied as a basis for rate-making or in some other way it can properly be attacked, and "it's [the Commission's] conclusions, if erroneous in law, may be disregarded. But neither its utterances, nor its processes of reasoning, as distinguished from its acts, are a subject for injunction".

United States v. Berwind-White Coal Mining Co.[29] upholds an important order of the Interstate Commerce Commission governing the distribution of cars among bituminous coal mines in times of car shortage. It prohibits any carrier from placing for loading at any mine more than the mine's ratable share of all cars available for use in the district. The ratable share depends, of course, on the mine's daily output, and the total number of cars available includes "assigned cars," i.e., those privately owned by the mine, or owned by a carrier and assigned to the mine to carry the road's own fuel. In other words, the mine is deprived of the advantage of using its own cars or cars assigned to it by special contract with consignees. The order in excess of the quota, does not, however, divert these assigned cars to other mines. Mr. Justice Brandeis, after remarking that "Congress could exclude private cars from interstate railroads," considers and rejects the contention that "the Commission's order amounts to a denial of due process, as an arbitrary interference with the right of mines and carriers to manage their own affairs and control their own property." Nor is the order in excess of the authority which Congress has bestowed on the Commission.

[28] 273 U. S. 299.
[29] 274 U. S. 564.

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d. National Taxation

The bitter warfare which Florida has been waging upon the inheritance tax provisions of the Revenue Act of 1926[30] was carried to the Supreme Court in the case of Florida v. Mellon[31] in an effort to enjoin the enforcement of the law. The constitution of Florida forbids inheritance taxation. In fact, several states showed signs of entering into a sort of competitive bidding to attract wealth into the state by subjecting it either to no death duties or to very low ones. Largely to destroy any such advantages, the federal act provided that the federal tax upon any inheritance might be reduced to the extent of the amount of any state inheritance tax paid, up to eighty per cent of the federal levy. A Florida estate would thus pay the entire tax; while a New York estate would pay a federal tax reduced by all or a large part of the amount of the New York inheritance tax. The Court fails to find any direct injury threatening either the state or the citizens of Florida warranting injunctive relief. The tax in question is laid uniformly throughout the United States, even though the results of its enforcement vary from state to state, because "the rule of liability which it sets up is alike in all parts of the country."

In Nichols v. Coolidge[32] it is held that the federal inheritance tax law does not apply to a transfer by deed of real estate made by a grantor to his children before his death, although it is understood that the grantor shall continue to occupy the property but has no agreement which protects him in doing so. This is held to be an absolute transfer. An attempt was made also to include, in the gross value of an estate subject to the inheritance tax, the value of property which had been transferred by the decedent before the passage of the act, not in contemplation of death, but to take effect at or after his death. This is held to be arbitrary and capricious, and consequently a taking of property without due process of law.

Is a bootlegger required under the Income Tax law to make a return and pay a tax upon the profits derived from his illegal business? This question is answered in the affirmative in the case of United States v. Sullivan.[33] "We see no reason," said Mr. Justice Holmes, speaking for the Court, "why the fact that a business is unlawful should exempt it from paying the taxes that if lawful it would have to pay." The

[30] Feb. 26, 1926, 44 Stat. at L. 9.
[31] 273 U. S. 12.
[32] 274 U. S. 531.
[33] 274 U. S. 259.

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protection against compulsory self-incrimination in the Fifth Amendment could be set up as a reason for not disclosing on the tax-blank facts of an incriminating nature, but would not justify a refusal to make any return at all. The defendant "could not draw a conjurer's circle around the whole matter by his own declaration that to write any word upon the government blank would bring him into danger of the law."[34]

e. National Prohibition

The Volstead Act forbids any one but a physician with a permit to issue a prescription for liquor and restricts the amount of spiritous liquor so prescribed for use by one person within any period of ten days to one pint. No such prescription may be refilled. The validity of this provision was attacked by a distinguished New York physician in the case of Lambert v. Yellowley.[35] It was alleged that such a restriction had no real or substantial relation to the appropriate enforcement of the Eighteenth Amendment and was, therefore, in excess of the power delegated to Congress by the amendment, and was in violation of the complainant's fundamental rights protected by the Fifth Amendment. Both contentions were overruled by a five-to-four decision sustaining the provision. The Court concluded that the restriction on medicinal liquor was an "admissable measure for enforcing the prohibition ordained by the Eighteenth Amendment." The right of a physician to practice medicine is always subject to the police power of the states and to the power of Congress to enforce the Eighteenth Amendment. Mr. Justice Sutherland wrote a vigorous dissenting opinion emphasizing the view that this rigorous clause was in excess of any delegated authority in Congress to enforce the prohibition against the sale of liquor for beverage purposes.

In Murphy v. United States[36] it was held that an aquittal under a prosecution for maintaining a liquor nuisance does not prevent "padlocking" the premises to abate the nuisance. Mr. Justice Holmes, speaking for the Court, referred to the plausibility of the argument that the "padlocking" order is in effect a second punishment for the same offense. He holds, however, that the purpose of the injunction is preventive and not penal and that the two proceedings are quite

[34] In Alston v. United States, 274 U. S. 289, the Harrison Anti-Narcotic Act, as amended, is upheld against the contention that the restrictions imposed on buying and selling narcotics are not relevant to the taxing power.

[35] 272 U. S. 581.

[36] 272 U. S. 630.

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separate. "The government may have failed to prove the appellants guilty, and yet may have been and may be able to prove that a nuisance exists in the place."

A sharp tooth has been added to our system of federal prohibition enforcement by the decision in United States v. One Ford Coupe Automobile.[37] This holds that an automobile used for carrying contraband liquor may be forfeited to the government under Section 3,450 of the Revised Statutes[38] providing for such forfeiture in cases where taxes have not been paid on liquor so transported. This section does not protect the rights or interests of innocent persons in the vehicle, which may be forfeited even though no one is convicted or even prosecuted for any illegal act. Under Section 26 of the Volstead Act, such forfeiture is permitted only in case of the conviction of some one discovered in the act of transporting liquor in violation of law, and the interests in the vehicle of those who are innocent are preserved. Those guilty of unlawful transportation in this case were never apprehended or prosecuted. The Court holds that contraband liquor is still subject to tax, that the tax is not void as being a mere penalty, that the forfeiture clause in the Volstead Act did not supersede that of the Revenue Act nor so modify it as to protect the interests of innocent owners of vehicles illegally used, and that the remedies of the two acts may be concurrently enforced. Three justices dissented from this decision.

On the other hand, when a conviction is had under the Volstead Act for illegal transportation and the automobile forfeited as required by law, saving the interests of innocent owners, the government can not proceed to forfeit the car under Section 3,450 of the Revised Statutes (not saving the interests of innocent owners), since the Willis-Campbell Act of 1921[39] provides that conviction under one law will bar prosecution under the other. This is the case of Port Gardner Investment Co. v. United States.[40]

It is held in Dodge v. United States[41] that the seizure, without authority of law, federal or state, by state police officers of a boat used in rum-running, could be adopted by the federal government so as to justify a forfeiture. The boat could lawfully have been seized by federal officers. The owner suffers nothing that he would not have suffered

[37] 272 U. S. 321.
[38] U. S. Code, Title 26, Sec. 1, 181.
[39] Nov. 23, 1921, 42 Stat. at L. 222.
[40] 272 U. S. 564.
[41] 272 U. S. 530.

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had the seizure been authorized. Such forfeiture stands on different ground from the exclusion of evidence obtained by illegal search and seizure, as there is no invasion here of personal rights secured by the Constitution.

The authority of coast guard officers to interfere with the operations of rum runners beyond the twelve-mile limit is brought under review in two cases. In Maul v. United States[42] an American vessel was seized twenty-four miles from land and her forfeiture sought on the ground that she was engaged in a trade other than that for which she was licensed, and had proceeded on a foreign voyage without giving up her enrollment and license and without being duly registered. The tariff act of 1922[43] specifically authorizes the search of vessels within twelve miles of our coast to discover violations of federal law for which the vessel might be forfeited. It was contended that this act either specifically or impliedly repeals any previous act permitting search and seizure beyond such limit. The Court, however, holds that Section 3,072 of the Revised Statutes,[44] which traces its lineage to the Tariff Act of 1789,[45] supports the seizure in the present case. This section permits customs officers to seize vessels which are liable to seizure "by virtue of any law respecting the revenue, as well without as within their respective districts." This has not been repealed by the act of 1922. The coast guard officers may be regarded as customs officials. The phrase "without their respective districts" gives them authority to act outside the twelve-mile limit. The vessel here taken was liable to seizure under the revenue laws. Thus, as in the Ford Coupe Case,[46] an ancient provision to aid the collection of federal taxes is used as a weapon for prohibition enforcement.

In United States v. Lee[47] it is held that a motor-boat engaged in rum-running may be seized and searched outside the twelve-mile limit if there is probable cause to believe that it is engaged in violating the revenue laws. Under the rule of the Maul case just discussed, the seizure was good, and from the power of the officers to seize "it is fairly to be inferred that they are likewise authorized to board and search such vessels when there is probable cause to believe them subject to seizure. . . . ." The search without a warrant was lawful under the rule

[42] 274 U. S. 501.
[43] September 21, 1922, 42 Stat. at L. 858.
[44] U. S. Code, Title 19, Sect. 506.
[45] July 31, 1789, 1 Stat. at L. 29.
[46] *Supra*, note 37.
[47] 274 U. S. 559.

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of the Carroll case[48] applicable to the search of vehicles and boats. The government's failure to bring action to forfeit the boat and liquor did not vitiate the seizure or search. The liquor seized was lawfully placed in evidence.[49]

III. JUDICIAL POWER

Kentucky enacted in 1922 a declaratory judgment statute providing that when "an actual controversy exists" the plaintiffs may seek and obtain a binding "declaration of rights," whether any actual consequential relief is sought or not. A Kentucky statute of 1924 regulates the sale of leaf tobacco at public auctions. In Liberty Warehouse Co. v. Grannis[50] the plaintiffs, a Kentucky corporation and a citizen of North Carolina, seek from a federal district court a declaration of their rights under the statute, jurisdiction being invoked on the ground of diverse citizenship. The attorney-general of the state was made a defendant. It was alleged that the statute in question violated the state constitution, the federal commerce clause, the due process and equal protection clauses of the Fourteenth Amendment, and the Sherman Act. The Supreme Court here holds the lower court correct in dismissing the case for want of jurisdiction, since under the facts as stated no "case or controversy" was presented to the court. Federal judicial power "does not extend to the determination of abstract questions or issues framed for the purpose of invoking the advice of the court without real parties or a real case." Authority in point is found in Muskrat v. United States.[51] The implications of the case are not wholly clear. State courts have divided sharply on whether rendering a declaratory judgment is a bona fide exercise of judicial power, the weight of authority holding that it is.[52] This case certainly points in the other direction, but it should be noted that the provisions of the declaratory judgment act are here invoked solely to seek what amounts

[48] Carroll v. United States, 267 U. S. 132. See comment in this *Review*, vol. 20, p. 87.

[49] In Ford v. United States, 273 U. S. 593, there is a somewhat elaborate examination of our treaty of 1925 with Great Britain permitting search and seizure of vessels seeking to smuggle liquor into this country. It is held that the treaty is not violated by the seizure of an English vessel and the arrest of those on it, outside the three-mile limit, for a conspiracy to violate the Prohibition Act laid in a bay within our territorial jurisdiction. Several complex problems incident to the proceeding are discussed in a long opinion.

[50] 273 U. S. 70.

[51] 219 U. S. 346.

[52] The state decisions have been commented upon in this *Review*, vol. 20, p. 587, and vol. 21, p. 581.

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to an advisory opinion from the court on questions of constitutional law. Whether the Supreme Court would react in the same way to a demand for a declaration of the adverse rights of private litigants properly argued is not settled.

United States v. Gettinger[53] holds that the federal government is not obligated to return a fine collected under an unconstitutional statute (the Lever Act),[54] even though the original defendants in pleas of *noto contendere* waived claims to such fines "except in the event" that the act be held void by the Supreme Court. This did not amount to a contract to return the fine, as "neither the court nor any federal officer had authority to make such an agreement."[55]

IV. THE FEDERAL BILL OF RIGHTS

a. The Fourth Amendment—Searches and Seizures

A federal officer cannot make a lawful search of a person's premises under a warrant invalid under federal law, even though it may comply with state law. Where the federal officer joins a party to make a search under a state warrant in the hope of turning up evidence of federal law breaking, evidence so found not covered by the warrant and not relating to violation of state law can not be admitted in a federal court. It is the presence of the federal officer that vitiates the search, for, the Court adds, "we do not question the right of the federal government to avail itself of evidence improperly seized by state officers operating entirely upon their own account." This is the case of Byars v. United States.[56] On the other hand, where a lawful warrant is procured the illegal act of federal agents in destroying liquor on the searched premises does not make their entire action a trespass nor render inadmissable as evidence samples of the liquor discovered. "A criminal prosecution," says Mr. Justice Stone, "is more than a game in which the government may be checkmated and the game lost merely because its officers have not played according to rule." See McGuire v. United States.[57]

[53] 272 U. S. 734.

[54] Act of August 10, 1917, 40 Stat. at L. 276, as amended by act of October 22, 1919, 41 Stat. at L. 297.

[55] In New York v. Illinois, 274 U. S. 488, it is held that New York may not secure injunctive relief against the diversion by Illinois of water from the Great Lakes on the ground that such diversion will prevent the use by the state of New York and its citizens of the water for power purposes, since no such use is shown nor immediately contemplated, nor has Congress consented to such use.

[56] 273 U. S. 28.

[57] 273 U. S. 95.

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b. Double Jeopardy

The familiar rule of United States v. Lanza[58] and earlier cases, that one is not placed in double jeopardy by being prosecuted by both federal and state governments for the same act, is reiterated in Hebert v. Louisiana.[59] Hebert was under federal indictment for manufacturing liquor and was released on bail. He was thereupon arrested and put on trial in the state court for the same act, which also violated the state law. The Court not only rejected the plea of double jeopardy but held, following Ponzi v. Fessenden,[60] that the state arrest, in the absence of any federal governmental objection, was not in derogation of federal authority so as to defeat state jurisdiction. The plea of double jeopardy was set up also in Albrecht v. United States[61], where the defendants were convicted separately both of possessing and of selling the same liquor. The Court overrules this objection, declaring "there is nothing in the Constitution which prevents Congress from punishing separately each step leading to the consummation of a transaction which it has power to prohibit, and punishing also the completed transaction."

c. Due Process of Law

In Farrington v. Tokushige[62] an act of the legislature of Hawaii imposing rigid restrictions upon private foreign-language schools and the teachers thereof was declared invalid for want of due process under the doctrine of Meyer v. Nebraska[63] and Pierce v. The Society of Sisters.[64] The restrictions included a system of licenses, fees, limitation of hours, prescription of studies and text-books, as well as examination of teachers, who must possess "the ideals of democracy" and pledge themselves to promote Americanism. No adequate reason, in the Court's judgment, is disclosed to justify these regulations. The decision rests on the Fifth Amendment and is, it is believed, the first authoritative application of the due process clause of that amendment to an unincorporated territory. Says the Court: "The inhibition of the Fifth Amendment [due process] applies to the federal government and agencies set up by Congress for the government of the territory." It will be

[58] 260 U. S. 377. See comment in this *Review*, vol. 18, p. 60.
[59] 272 U. S. 312.
[60] 258 U. S. 254. See comment in this *Review*, vol. 16, p. 622.
[61] 273 U. S. 1.
[62] 273 U. S. 284.
[63] 262 U. S. 390. See comment in this *Review*, vol. 18, p. 69.
[64] 268 U. S. 510. See comment in this *Review*, vol. 20, p. 98.

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recalled that in Yu Cong Eng v. Trinidad,[65] the Chinese Bookkeeping Act passed by the Philippine legislature was held void, not under the Fifth Amendment, but under the due process and equal protection clauses which Congress had incorporated into the organic law of the territory.

Two cases[66] raise questions of due process of law in proceedings for the deportation of aliens, but those questions are neither new nor striking. It is held in Jones v. Prairie Oil and Gas Company[67] that there is no denial of due process in allowing an infant's guardian to lease the infant's homestead, which may not be alienated for a term extending beyond his majority.

V. STATUTORY CONSTRUCTION—MISCELLANEOUS

a. The Anti-Trust Acts

The prohibitions of the Sherman Act[68] and the Wilson Tariff Act[69] as amended are violated by contracts, combinations, and conspiracies entered into by parties in the United States which resulted in the control of the importation and sale of sisal (from which binder twine is made) and a complete monopoly of interstate and foreign commerce in that product. This is held in United States v. Sisal Sales Corporation.[70] As long as the unlawful conspiracies took place in this country it does not matter that the acts which were the objects of the conspiracy—in this case the securing of discriminatory legislation by foreign governments—transpired elsewhere. This distinguishes the case from American Banana Co. v. United Fruit Co.,[71] where the unlawful acts and conspiracies all took place outside the jurisdiction of the United States.

In United States v. Brims[72] the criminal sections of the Sherman Act were held applicable to an agreement which had been entered into between manufacturers of millwork in Chicago, contractors purchasing and using such millwork, and representatives of the carpenters' unions.

[65] 271 U. S. 500. See comment in this *Review*, vol. 21, p. 81.

[66] United States *ex rel.* Vajtauer v. Commissioner of Immigration, 273 U. S. 103; Quon Quon Poy v. Johnson, 273 U. S. 352.

[67] 273 U. S. 195.

[68] July 2, 1890, 26 Stat. at L. 209.

[69] August 27, 1894, 28 Stat. at L. 509, as amended by act of February 12, 1913, 37 Stat. at L. 667.

[70] 274 U. S. 268.

[71] 213 U. S. 347.

[72] 272 U. S. 549.

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Under the agreement the manufacturers and contractors would employ only union carpenters who, in turn, would refuse to install non-union-made millwork. This would eliminate the competition of outside non-union mills which were paying lower wages and underselling the Chicago mills and was clearly a direct and material restraint upon interstate commerce.

In Bedford Cut Stone Co. v. Journeymen Stone-Cutters' Association[73] the doctrine of the case just mentioned is pushed even farther and an injunction is sustained against a rule of the stone-cutters' national union forbidding members to handle "unfair" stone, i.e., stone upon which non-union men had worked. This was held to involve an unlawful restraint of interstate commerce in stone, which was not condoned by the fact that the primary object of the rule was to unionize the cutters and carvers of stone and strengthen and protect their interests. This follows the rule in Duplex Printing Press Co. v. Deering.[74] Justices Holmes and Brandeis dissented.

Anderson v. Ship-owners Association[75] holds that injunctive relief under the Sherman Act may be invoked against an Association of Pacific Coast American Ship-owners which agrees amongst its members to employ seamen only in accordance with the strict rules of the association. These rules, comprising registry, wage fixing, and a system of assignment of men to jobs in the order of application, made impossible an individual bargain of employment between a seaman and a ship-owner. Ships and those who operate them are instrumentalities of commerce, and these restrictive rules are a direct and primary interference with the freedom of that commerce.

b. Discrimination Against National Banks

Congress has allowed the states to tax the shares in national banks subject to the restriction that "the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the state."[76] It has previously been held that "other moneyed capital" means "only that which is employed in such way as to bring it into substantial competition with the business of national banks."[77] In First National Bank v. Hartford[78] a Wisconsin

[73] 273 U. S. 677.
[74] 254 U. S. 443.
[75] 272 U. S. 359.
[76] U. S. Code, Title 12, Section 548.
[77] First National Bank v. Anderson, 269 U. S. 341.

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statute placing an ad valorem tax on all shares of banks, "including national banking associations," but exempting moneyed capital in the hands of individual citizens, was held to violate the federal restriction. This is on the ground that such capital, when used in the business of making loans or selling credits, is placed in competition with the capital of national banks. A similar result is reached in Minnesota v. First National Bank[79] with reference to a somewhat analogous situation arising under a statute of that state.

c. Cancellation of Oil Lease

In Pan American Petroleum and Transportation Co. v. United States[80] the Supreme Court sustained the cancelling of the notorious leases of oil lands in California made to Mr. Doheny by Secretary Fall in 1920. Reviewing the legislation dealing with the status of these lands and all phases of the transactions culminating in the leases mentioned, the Court finds that the leases were not authorized by any act of Congress and that "the whole transaction was tainted with corruption." It is "not necessary to show that the money transaction between Doheny and Fall constituted bribery as defined in the Criminal Code . . . . . It is enough that these companies sought and corruptly obtained Fall's dominating influence in furtherance of the venture. It is clear that, at the instance of Doheny, Fall so favored the making of these contracts and leases that it was impossible for him loyally or faithfully to serve the interests of the United States." Furthermore, the Court held, that all structures, fuel delivered, and various improvements on the lands in question become the property of the United States without reimbursement to the Doheny interests.

B. QUESTIONS OF STATE POWER

I. THE FOURTEENTH AMENDMENT

a. Equal Protection of the Law

A Texas statute of 1923 relating to primary elections provided: "In no event shall a negro be eligible to participate in a Democratic party primary election held in the state of Texas, and should a negro vote in a Democratic primary election, such ballot shall be void and election officials are herein directed to throw out such ballot, and not count

[78] 273 U. S. 548.
[79] 273 U. S. 561.
[80] 273 U. S. 456.

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the same." In Nixon v. Herndon,[81] a damage action brought by a negro barred from voting in a primary, this is held unconstitutional as a denial of the equal protection of the law. Says Mr. Justice Holmes: "The states may do a good deal of classifying that it is difficult to believe rational, but there are limits, and it is too clear for extended argument that color cannot be made the basis of a statutory classification affecting the right set up in this case." The plaintiff had alleged violation of the Fifteenth Amendment as well as the Fourteenth, but the Court said: "We find it unnecessary to consider the Fifteenth Amendment, because it seems to us hard to imagine a more direct and obvious infringement of the Fourteenth." In the case of Chandler v. Neff[82] a federal district court in Texas had considered the validity of this law under the Fifteenth Amendment and had sustained it on the doctrine of the Newberry case[83] that federal control over elections does not extend to primaries and that states could, therefore, regulate such primaries as they pleased. Considerable speculation had been rife as to whether the Supreme Court could invalidate the Texas statute under the Fifteenth Amendment without reversing or weakening the questionable rule laid down in the Newberry decision. By resting its decision exclusively on the Fourteenth Amendment, the Court sidesteps this issue.

An alien is not denied the equal protection of the laws by a municipal ordinance which excludes him, because he is not a citizen, from operating a pool-room. This is not an irrational discrimination, nor does it violate the clause of the treaty with Great Britain securing "reciprocal liberty of commerce." The owner of a place of amusement is not engaged in commerce. This is the case of Ohio *ex. rel.* Clarke v. Deckelbach[84].

In Power Mfg. Co. v. Saunders[85] the equal protection of the laws is held to be denied by an Arkansas statute under which a foreign corporation lawfully doing business in the state may be sued in any county, whether it maintains a place of business or agent there or not, while a domestic corporation may be sued only where it actually does business or where its chief officer resides. This is deemed arbitrary discrimination and, following a well established doctrine, the license which defines the foreign corporation's rights in the state does not obligate it to submit

[81] 273 U. S. 536.
[82] 298 Fed. 515.
[83] Newberry v. United States, 256 U. S. 232.
[84] 274 U. S. 392.
[85] 274 U. S. 490.

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to unconstitutional state regulations. Justices Holmes and Brandeis dissent on the ground that the inequality involved was not wholly unreasonable and was the subject of contract between the corporation and the state.

b. Due Process of Law

1. *The Police Power*

The cases at the 1926 term involving the application of the test of due process of law to state police legislation are of more than usual intrinsic importance. At the same time, the opinions filed by both majority and dissenting justices show the Court to be as far as ever from any common intellectual approach to these vital problems.

A decision of genuinely social significance is that in Buck v. Bell[86] holding constitutional the sterilization of mental defectives confined in public institutions. The Virginia act of 1924, which was attacked, had carefully safeguarded procedural rights of those subject to the law so that no want of due process was made out on that score. The substance of the law itself is upheld as a reasonable social protection, entirely compatible with due process of law. Mr. Justice Holmes' trenchant statement of this warrants quotation. "We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the state for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes . . . . . Three generations of imbeciles are enough." Nor is there unreasonable discrimination in applying the law to inmates of institutions and not to defectives outside.[87]

By a five-to-four decision, the Court holds unconstitutional the New York statute of 1922 declaring the price of theatre tickets to be a matter affected with a public interest and forbidding under penalty the resale of any such ticket at more than fifty cents over the price printed on its face. This is the case of Tyson and Bro. v. Banton.[88]

[86] 274 U. S. 200.

[87] The state decisions on this question are commented on in this *Review*, vol. 20, p. 600.

[88] 273 U. S. 418.

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The majority, speaking through Mr. Justice Sutherland, conclude that theaters are not businesses affected with a public interest and that governmental control of their prices is a denial of due process. This conclusion is supported by an elaborate survey of precedents in the matter of price regulation from which the following deduction is made: "Each of the decisions of this Court upholding governmental price regulation, aside from cases involving legislation to tide over temporary emergencies [such as rent control during the war], has turned upon the existence of conditions, peculiar to the business under consideration, which bore such a substantial and definite relation to public interest as to justify an indulgence of the legal fiction of a grant by the owner to the public of an interest in the use." A theater does not fall in this category and the public's interest in it is essentially like that in a grocery or apartment house. The Court admits that theaters may be regulated to protect public morals; but they are not subject to the requirement of equal service to all who apply, nor to a regulation of their charges. Judgment is reserved on the interesting question whether, under this conception of its status, a theater could discriminate amongst its patrons on grounds of race, color, or creed. The essential ground of the dissents of Justices Holmes, Stone, and Brandeis is their protest against too strict and conventional an application of the concept, "business affected with a public interest." Says Mr. Justice Stone: "It is difficult to use the phrase free of its connotation of legal consequences, and hence, when used as the basis of a judicial decision, to avoid begging the question to be decided." In his judgment, the cases supporting price-regulation show that the common element "is the existence of a situation or a combination of circumstances materially restricting the regulative force of competition, so that buyers or sellers are placed at such a disadvantage in the bargaining struggle that serious economic consequences result to a very large number of members of the community." It makes no difference that the business regulated is "less essential to life than some others." Theaters fall within the rule as stated. Mr. Justice Sanford dissented on the ground that the business of a theater-ticket broker was affected with a public interest, regardless of the legal status of the business of the theater itself.[89]

[89]Mr. Justice Holmes says in his dissent: "I think. . . . . that the notion that a business is clothed with a public interest and has been devoted to the public use is little more than a fiction intended to beautify what is disagreeable to the sufferers. The truth seems to me to be that, subject to compensation when compensation is due, the legislature may forbid any business when it has a sufficient force of public

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Two cases of importance to the progress of city planning and municipal improvement were decided at this term. The most significant of these is Euclid v. Ambler Realty Co.,[90] upholding a zoning ordinance for the protection of residential districts. The ordinance divides the village of Euclid, outside of Cleveland, into six classes of districts according to the use made of the land or buildings, three classes of height districts, and four classes of area districts. Only the use districts were under attack in this case. The first use districts are restricted to single family dwellings, parks, and one or two other unobjectionable purposes. The second class is extended to include two-family dwellings; the third permits apartment houses, hotels, churches, schools, etc. Manufacturing and industrial operations, in general, are kept out of the first five zones. Most of the Ambler Realty Company's property fell in the second and third zones, and some in the sixth. It had been held for industrial purposes, and, so used, would bring about $10,000 per acre. If restricted to residential purposes, it is worth not over $2,500 per acre. The zoning restrictions are alleged, therefore, to deprive the company of property without due process of law. The opinion of Mr. Justice Sutherland embodies a most liberal attitude toward the state's police power. In fact, it is hard to realize that he is the same justice who wrote the majority opinions in Tyson and Bro. v. Banton[91] and the Minimum Wage Case.[92] He emphasizes that while constitutional guaranties do not change in meaning, the scope of their application "must expand or contract to meet new and different conditions." What constitutes a nuisance cannot be settled by abstract rules of law. "A nuisance may be merely a right thing in the wrong place—like a pig in the parlor instead of the barnyard." Further, "if the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." Little argument is

opinion behind it. . . . . But if we are to yield to fashionable conventions, it seems to me that theatres are as much devoted to public use as anything can well be. We have not that respect for art that is one of the glories of France. But to many people the superfluous is the necessary, and it seems to me that government does not go beyond its sphere in attempting to make life livable for them. I am far from saying that I think this particular law a wise and rational provision. That is not my affair. But if the people of the state of New York speaking by their authorized voice say that they want it I see nothing in the Constitution of the United States to prevent their having their will."

[90] 272 U. S. 365.

[91] *Supra*, note 88.

[92] Adkins v. Children's Hospital, 261 U. S. 525.

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devoted to the exclusion of all industrial establishments from the restricted areas. This is a reasonable extension of principles now well established and is not vitiated by the fact that some unobjectionable industries are placed under the ban. The main issue in the case arises over the exclusion from residential zones of apartment houses, hotels, and stores. The Court is obviously impressed with the weight of authority in the state courts sustaining such restrictions, and sets forth at some length the justifying arguments embodied in the state opinions. The considerations supporting the exclusion of business houses and stores are: more effective police protection, less danger from loiterers and criminals, economy in street-paving due to lighter traffic, elimination of noise, disturbance, odors, vermin, etc. The apartment house is a potential nuisance since it is "often a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district." Furthermore, it cuts off free circulation of air, monopolizes sunshine, brings increased traffic and business which results in disturbing noises, and causes the "occupation, by means of moving and parked automobiles, of larger portions of the streets, thus detracting from their safety and depriving children of the privilege of quiet and open spaces for play." These considerations make it impossible to say that the restrictions are arbitrary and have no relation to public health, safety, morals, or general welfare. Justices Van Devanter, McReynolds, and Butler dissent.

The case of Gorieb v. Fox[93] upholds the validity of an ordinance establishing a building line, or setback, on streets in residential districts. This was an ordinance of 1924 of Roanoke, Virginia, providing that in such districts buildings subsequently erected must be kept back to a line at least as far from the street as that occupied by sixty per cent of the existing houses in the block (on the same side of the street). The city council may make exceptions to the rule. The plaintiff wished to erect a brick store building on the street line and was required to keep it back about thirty-four feet. The Court rejects the various grounds on which he attacks the validity of the ordinance. The sixty per cent rule is not too vague to be a workable standard. The power of the council to make exceptions to the operation of the ordinance may not be pleaded until that power is abused. The ordinance does not deprive land-owners of property without due process of law. The general theory of the Euclid case is relied upon here, and the ordinance is found to bear a reasonable relationship to public health, safety, and

[93] 274 U. S. 603.

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welfare. It reduces fire hazards by preventing building congestion; it prevents cutting off light and air; by keeping the view of street corners unobstructed, it reduces the danger of motor accidents. The case is distinguished from that of Eubank v. Richmond[94] decided in 1912 on the ground that the Richmond ordinance required the establishment of a building line upon the request of the owners of two-thirds of the abutting property—a scheme involving a delegation of legislative power to private individuals.

The right of a state to require the possession of a diploma from a dental college in good standing as a prerequisite to being examined for a license to practice dentistry is held in Graves v. Minnesota[95] not to be so arbitrary and unreasonable a requirement as to amount to a denial of due process or equal protection of the law. Nor (Hayman v. Galveston)[96] can the same objections prevail against a rule promulgated by the governing board of a public hospital excluding osteopathic physicians from practicing therein. It can not be said that all licensed physicians have a constitutional right to practice in a hospital maintained by public funds, and the discrimination against osteopaths is not arbitrary or unreasonable on its face. There was no restriction on the general right to practice.

Two state statutes aimed at monopoly and unfair trade practices fell under the ban of the Fourteenth Amendment. In Fairmont Creamery Co. v. Minnesota,[97] the Court, speaking through Mr. Justice Butler, held unconstitutional a statute which forbade creameries to buy cream at higher prices in one place than in another, barring the difference in the cost of transportation. This is held an arbitrary infringement of liberty of contract. Granting that an evil results from the high bidding of strong buyers, the prohibition here set up bears no reasonable relation to that evil but penalizes legitimate business transactions. In Cline v. Frink Dairy Co.,[98] the Colorado anti-trust law was held void for want of certainty under the doctrine of the Cohen Grocery Co. case[99] and Connally v. General Construction Co.[100] The act forbade conspiracies or combinations to do five definite enough things set forth in

[94] 226 U. S. 137.
[95] 272 U. S. 425.
[96] 273 U. S. 414.
[97] 274 U. S. 1.
[98] 274 U. S. 445.
[99] United States v. Cohen Grocery Co., 255 U. S. 81.
[100] Connally v. General Construction Co. 269, U. S. 385. See comment in this *Review*, vol. 21, p. 86.

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detail. It then added two provisos as follows: "no agreement or association shall be deemed to be unlawful . . . . the object and purposes of which are to conduct operations at a reasonable profit or to market at reasonable profit those products which can not otherwise be so marketed: . . . . it shall not be deemed to be unlawful . . . . for persons, etc. . . . . selling or manufacturing commodities of a similar or like character to employ, form, organize . . . . any association, firm or corporation having as its object or purpose the transportation, marketing or delivering of such commodities. . . . ." In an opinion written by Chief Justice Taft these exceptions are declared to "leave the whole statute without a fixed standard of guilt in an adjudication affecting the liberty of one accused." Due process of law requires a state "to frame its criminal statutes so that those to whom they are addressed may know what standard of conduct is intended to be required."

The Kansas Court of Industrial Relations Act of 1920, although pretty thoroughly emasculated by previous decisions, is not entirely toothless. Dorchy v. Kansas[101] sustains Dorchy's conviction under the section of the act making it a felony for a labor union officer wilfully to use the influence of his office to induce another to violate the act. The act, while reserving the right of the individual employee to quit work, forbids conspiracies to induce others to quit work for the purpose of hindering, delaying, limiting, or suspending the operation of mining. Dorchy, as an officer of the miners' local, ordered a strike to compel the company to pay a claim of $180 to a former workman based on certain disputed facts as to the man's age and consequent rate of pay. The strike was called in violation of an injunction of the state court. The broad question of the right of the state to prohibit strikes is not raised, but merely the question whether the application of this law to the facts of this case works a denial of due process. The Court holds that it does not. A strike to enforce the payment of such a claim as this one is coercion, and may be punished criminally as extortion or otherwise, as may be the act of the union officer in ordering such an unlawful strike. The case throws light upon a phase of the problem of partial unconstitutionality of statutes. In Wolff Packing Co. v. Court of Industrial Relations[102] the Court held void the scheme of compulsory arbitration provided by the act under which an order regulating hours of labor had issued. The question was raised, when a writ

[101] 272 U. S. 306.
[102] 267 U. S. 552.

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of error in the present case came before the Court in 1924,[103] whether the clause under which Dorchy was being prosecuted was separable from the invalid provisions requiring compulsory arbitration. This question was not passed on by the Supreme Court but was sent back to the supreme court of Kansas for decision. That tribunal held the sections were separable[104] and the Court now holds itself bound by that decision.

In Pizitz Dry Goods Co. v. Yeldell[105] a statute which allows punitive damages to be assessed against an employer for the mere negligence of an employee which results in death is held not to deny due process of law. It involves an extension of the doctrine of liability without fault, but for recognized considerations of public policy. As Mr. Justice Stone puts it: "We can not say that it is beyond the power of a legislature .... to attempt to preserve human life by making homicide expensive."

The Court decided three cases involving the validity of state syndicalism laws. Of these, Whitney v. California[106] is the most conspicuous, due to the fact that the defendant was a highly respected social worker. She had been convicted under the provision of the California Criminal Syndicalism Act making it a felony to assist in organizing, or to become a member of, any society or group organized to teach or aid criminal syndicalism, which is elaborately defined. Miss Whitney had joined the California branch of the Communist Labor party and was active in its counsels. She denied all intention, in joining the organization, to violate any law or indulge in terrorism or violence, although the party in its program advocates political strikes and the proletariat revolution. On the pleadings the Supreme Court found itself confined to a consideration of the validity of the statute. This it found free from objection on the grounds of due process, or equal protection of the law. It is not an arbitrary exercise of the police power of the state. In a concurring opinion Mr. Justice Brandeis reiterates his view that restrictions on the right of utterance or assembly are not valid unless there is a clear and present danger of some evil which the state may constitutionally seek to prevent. He protests against the idea in the opinion of the Court that "assembling with a political party, formed to advocate the desirability of a proletarian revolution by mass action

[103] Dorchy v. Kansas, 264 U. S. 286.
[104] State v. Howatt, 116 Kans. 412.
[105] 274 U. S. 112.
[106] 274 U. S. 357.

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at some date necessarily far in the future, is not a right within the protection of the Fourteenth Amendment." He felt, however, that in this case a clear and present danger existed in the activities of the I. W. W. which the Communist Labor party was committed to support. The defendant, since the decision in the case, has been pardoned by the governor of California.

The Criminal Syndicalism Act of Kansas, in terms much like that of California, was made the basis in Fiske v. Kansas[107] of the conviction of one who sought to persuade people to become members of a branch of the Industrial Workers of the World, which teaches "that the working class and the employing class have nothing in common . . . . and between these two classes a struggle must go on until the workers of the world organize as a class, take possession of the earth and the machinery of production, and abolish the wage system." There was no allegation that the organization advocated violence or crime. The state law as applied in this case is an arbitrary and unreasonable exercise of the police power amounting to a denial of liberty without due process of law.

In Burns v. United States[108] the Court approves the definition of the term "sabotage," the advocacy of which is forbidden by the California Criminal Syndicalism Act, to include slowing down on the job or the scamping of work in a deliberate attempt to reduce profits. The defendant had urged workmen loading poles upon ships to do it in such a manner that they would need to be reloaded, thereby increasing the amount of labor. The conviction here was for an offense committed in Yosemite National Park under a federal statute making California laws applicable there to punish offenses not prohibited by a law of the United States.

2. *State Taxation*

Under a plan devised by the makers and sellers of Chrysler motor cars every purchaser received insurance against fire and theft, whether he wished it or not, as part of his bargain. The insurance was placed by the Chrysler concern through certain insurance companies to whom the Chrysler corporation paid the premiums. The laws of Ohio forbid the insurance of property in the state except by a legalized agent and tax the business lawfully done there. The insurance on Chrysler cars sold in Ohio was placed by a South Carolina company. Ohio sought

[107] 274 U. S. 380.
[108] 274 U. S. 328.

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to revoke the company's license to do business, on the ground of violation of the law. In Palmetto Fire Ins. Co. v. Conn.[109] it was held that the South Carolina company was doing business in Ohio when it thus insured cars, even though the contract was made under the laws of another state by parties both of whom were outside the state. "The substance is that by acts done in Ohio the purchaser obtains for himself the advantage of insurance that before that moment did not exist." The transaction was therefore subject to tax in Ohio for the non-payment of which the company could be ousted without violation of due process.

The well established rule that a state cannot, consistently with due process, exact as a condition of a corporation's right to do business within its limits that its rights secured by the federal Constitution may be infringed, is applied in Hanover Fire Ins. Co. v. Carr[110] to invalidate an Illinois law which requires foreign insurance companies to pay a tax on their net receipts from all their insurance business, a tax which domestic companies do not pay. The view of the Illinois court that the tax should be deemed a condition precedent to permission to do business in the state is rejected.[111]

3. *Regulation of Public Utilities*

In McCardle v. Indianapolis Water Co.[112] the Court passed upon a valuation of the property of the water company made by the state public service commission of Indiana and revised by the state court and used as a base for rate-making. The valuation was held too low and the rates accordingly confiscatory. Speaking through Mr. Justice Butler, the Court stated that in fixing present value consideration must be given not only to present prices and wages in computing reproduction costs, but also to future price and wage levels. On this basis the price level representing the average for ten years ending in 1921 was too low because it did not include the high prices and wages of 1922 and 1923, since which time the subsequent trend has been upward and not downward. The company was also entitled to have included the value of certain water rights which it had developed; and the Court further found the commission's estimate of the "going concern value" too low.

[109] 272 U. S. 295.

[110] 272 U. S. 494.

[111] Wachovia Bank & T. Co. v. Doughton, 272 U. S. 567, invalidates a state law as being an extraterritorial exercise of the power of taxation. Road Improvement District No. 1 v. Mo. Pac. R. Co., 274 U. S. 188, and Kadow v. Paul, 274 U. S. 175, involve questions of due process in special assessments.

[112] 272 U. S. 400.

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Mr. Justice Brandeis dissented on the ground that "spot reproduction cost," relied upon by the Court, is not a safe basis of valuation. "The search for value can hardly be aided by a hypothetical estimate of the cost of replacing the plant at a particular moment, when actual reproduction would require a period that must be measured by years."

4. *Civil and Criminal Procedure*

In a case of considerable significance, Tumey v. Ohio,[113] the Court held that an accused person is deprived of due process of law by being subjected as to liberty or property to the judgment of a court, the judge of which has a pecuniary interest in seeing the defendant convicted inasmuch as he receives a share of the fine imposed. Under Ohio statutes the mayor of every village has jurisdiction of misdemeanors committed anywhere in the county. This accounts for the fact that the defendant here is being tried before the mayor of North College Hill for the unlawful possession of liquor at White Oak, another village in the same county. Under the ordinances of North College Hill half of the village's share of the fines collected under the state prohibition law is variously allocated so as to increase the efficiency of prohibition law enforcement. Marshalls, prosecuting attorneys, and secret service agents get fixed percentages of such fines, and the mayor, besides his salary, gets the amount of his costs in case the defendant is convicted, but nothing in the way of fees or costs in case of acquittal. In some seven months the treasury of the village had been enriched nearly $5,000 from fines collected, while the mayor in whose court the defendant Tumey was convicted had received $696.35 in fees and costs from liquor cases in addition to his regular salary. The conviction of Tumey himself had netted the mayor $12 and the village $50. It was further shown that some local division of opinion had existed in the village as to whether the "liquor court" should be continued and the mayor had declared that he would carry it on if the village finances required it, otherwise not. In an able opinion Chief Justice Taft reviews both English and American precedents, and reaches the conclusion that "a system by which an inferior judge is paid for his services only when he convicts the defendant has not become so embedded by custom in the general practice either at common law or in this country that it can be regarded as due process of law unless the costs usually imposed are so small that they may be properly ignored as within the maxim *de minimis non curat lex*." The interest of the mayor here, amounting to about

[113] 273 U. S. 510.

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$100 a month, is not remote or insignificant. And "every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the state and the accused, denies the latter due process of law." Not only does the mayor have a personal pecuniary interest but he also has an official responsibility for the financial condition of the village which would tend to influence him to the detriment of the accused. Several minor objections to the ordinance are swept aside by the Court.

A state may without denial of due process forfeit an automobile used in violating the prohibition law, even when the owner had no knowledge that the one to whom he entrusted it intended to put it to unlawful use. There is nothing new in visiting "upon the owner of property the unpleasant consequences of the unauthorized action of one to whom he has entrusted it." It is no objection to the validity of the act that its scope is broader than the forfeiture section of the Volstead Act, which protects the interests of innocent owners. This is the case of Van Oster v. Kansas.[114]

Kelley v. Oregon[115] reaches the obvious result that a prisoner serving a twenty-year sentence is not deprived of due process by being sentenced to death for a murder committed in an attempt to break jail. The suggestion that he has a constitutional right to serve his twenty years before being hanged is ridiculous. The Court cites with approval the lower court decisions answering the same question in the Gerald Chapman case.

A Massachusetts act of 1923 provides that when a non-resident drives a motor car upon the highways of the state he thereby appoints the state registrar of vehicles as his agent upon whom process may be served in proceedings arising out of a collision or accident on the highway. He must actually receive and must receipt for notice of the service and a copy of the process. He is allowed time and opportunity to make his defense. In Kane v. New Jersey[116] it was held that a state could require a non-resident to appoint one of its officials as his agent for the service of process before allowing him to drive a car on its roads. This act, it is held in Hess v. Pawloski,[117] goes but a step further in making the use of the highway equivalent to such appointment of an

[114] 272 U. S. 465.
[115] 273 U. S. 584.
[116] 242 U. S. 160.
[117] 274 U. S. 352.

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agent, and the difference is not sufficient to amount to want of due process.

II. STATE POLICE POWER AND INTERSTATE COMMERCE

To determine when a statute passed in the exercise of the state's police power creates or permits an unconstitutional interference with interstate commerce is a problem of difficulty and importance which continues to engage the attention of the Court. During the 1926 term four state police regulations so attacked were held valid and four others invalid. These decisions in general show the Court to be leaning toward a strict and vigorous protection of the federal interests involved.

Napier v. Atlantic Coast Line R. Co.[118] involved the validity of a Georgia statute prescribing an automatic fire door on locomotives in the state. Merged with the Napier case were two cases attacking the Wisconsin act prescribing a cab curtain for locomotives. Both statutes were clearly good unless, as applied to locomotives in interstate commerce, they violated the commerce clause. It was further admitted that they did not violate that clause unless Congress had positively occupied the field of legislation in which they fell. Congress has not passed any laws affecting locomotive fire doors or cab curtains. It has, however, by subsequent amendments to the Boiler Inspection Act,[119] shown its intention to occupy the whole field of locomotive equipment regulation, since in that legislation it forbade the use of locomotives in interstate commerce which are not thoroughly safe and empowered the Interstate Commerce Commission to promulgate rules to make them so. This the Commission has done, but it has made no rules regarding fire doors or cab curtains. The state acts are nevertheless void because Congress by its grant of power to the Commission has occupied the entire field so that "requirements by the states are precluded, however commendable or however different their purpose." This is the same strict rule which was applied at the preceding term in the Washington alfalfa quarantine case commented on in this *Review*.[120] It would seem to the writer that a sounder rule would be to sustain these state regulations unless they can be shown to clash with positive federal legislation or administrative rules, rather than to hold them in conflict with a broad grant of authority which, through indifference or ignorance of

[118] 272 U. S. 605.

[119] Act of February 17, 1911, 36 Stat. at. L. 913.

[120] Oregon-Washington R. & Navigation Co. v. Washington, 270 U. S. 87. See this *Review*, vol. 21, p. 92.

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local conditions, may never be exercised. No serious consequences could result from this more lenient rule, since the remedy for any actual state obstruction of federal rules is so obvious and easy.

By a six-to-three decision, the Court invalidated a Pennsylvania statute of 1921 requiring persons selling steamship tickets and orders for passage between the United States and Europe to secure licenses, file proof of character, file bond to account for moneys received, and refrain from fraud and misrepresentation. This is the case of Di Santo v. Pennsylvania.[121] The majority held that the soliciting of passengers and the sale of steamship tickets are a recognized part of foreign commerce, and that the requirements of the statute constitute a direct burden on that commerce. The dissenting justices contend that the transaction regulated (the sale of the ticket) is intrastate, and that foreign commerce is not burdened by the requirements of the act.

Public Utilities Commission v. Attleboro Steam & Electric Co.[122] holds that the transmission of electric current across a state line is interstate commerce although the title and control of the current passes from buyer to seller at the state line. Here a Rhode Island corporation generated electric current in Providence, which it sold to the defendant, a Massachusetts concern selling electric current for public and private use. Title to the current passed at the state line. The price was fixed by contract in 1917 at a point which had come to be too low. The Rhode Island Public Service Commission attempted to establish a new and higher rate to supersede the contract rate. This it is held to have no power to do, since such an order is a burden on interstate commerce.

While it is admitted that, in the absence of federal legislation on the subject, ferries operated across boundary waters between states may be regulated by state law as to rates and in respect to the safety and convenience of the business, such ferries are still instruments of interstate commerce and no state may forbid their operation without a license. This is held in Vidalia v. McNeely.[123] The same rule was applied earlier to a ferry between Michigan and Ontario. The state's power to regulate does not include the power to license or prohibit.

A Massachusetts statute requiring those engaged in interstate bus transportation to secure a license before engaging in intrastate business is not a burden on interstate commerce nor a denial of due process of law. The law does not extend to any business exclusively interstate,

[121] 273 U. S. 34.
[122] 273 U. S. 83.
[123] 274 U. S. 676.

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and the complainant, who has not even applied for a license under the law, does not show how the enforcement of the act would operate to prejudice the interstate carriage of passengers. This is the case of Interstate Busses Corp. v. Holyoke Street Ry. Co.[124] In Morris v. Duby[125] it is held that in the absence of federal legislation a state may rightfully limit the weight of loads passing over its highways both in interstate and local commerce. Such regulations promote both safety and economy and constitute no burden on interstate commerce. An Oregon statute limited such loads to 16,500, a reduction from a previous limit of 22,000, pounds. No contract can be implied to continue the higher limit, nor does the fact that a trucking company may not make a profit unless it can carry the heavier load make the statute discriminatory or unreasonable. In Stewart & Co. v. Rivari[126] the New York conditional sales act is held to be applicable to the sale of a tug-boat used in interstate commerce and not to be invalid as an interference with such commerce.

III. STATE TAXATION AFFECTING FEDERAL INTERESTS

In Clark v. Poor[127] it is definitely settled that a state may impose upon those who use its highways, even when they are engaged exclusively in interstate commerce, a tax to help cover the cost and upkeep of the roads. The tax here did not discriminate against interstate commerce, nor was it so high as to amount to a burden on such commerce. A Kentucky tax of one per cent upon the market value of all oil produced in the state is held in Swiss Oil Corp. v. Shanks[128] to be an occupation or license tax. Thus construed, it is not a tax on interstate shipments of oil and therefore a burden on interstate commerce. It may validly be imposed in addition to ad valorem taxes on oil-producing property, even though producers of other commodities are not so taxed, since such classification is not arbitrary, amounting to a denial of equal protection of the law, and since the Fourteenth Amendment does not forbid double taxation.

Southern Railway Co. v. Kentucky[129] held invalid a state tax levied upon the franchise to operate a small portion of the Southern Railway

[124] 273 U. S. 45.
[125] 274 U. S. 135.
[126] 274 U. S. 614.
[127] 274 U. S. 554.
[128] 273 U. S. 407.
[129] 274 U. S. 76.

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Company's system lying in Kentucky. The tax was on intangible property and was computed by capitalizing the net income from the entire system and assigning to Kentucky the proportion of that amount corresponding to the mileage located in the state and then deducting the assessed value of tangible property otherwise taxed. The Kentucky branch had been losing money for five years; therefore to attribute to it values based on earnings of the entire system is arbitrary and amounts to taxation of property outside the state. The mileage basis of valuing railroad franchises may be employed only when the results are not arbitrarily excessive.

In Miller v. Milwaukee[130] an attempt of the state to reach the income from federal bonds by a somewhat indirect method was defeated. A Wisconsin corporation owned United States bonds the income from which was paid to stockholders as dividends. The corporations paid a tax to the state upon their income minus that from these bonds. The Wisconsin law provides that stockholders shall not pay an income tax upon dividends from corporations the income from which has been taxed, but that if only part of the corporate income is taxed only a corresponding part of the dividends should be deducted from the income taxed to the stockholder. This the Court holds to be an intentional effort to make up from the stockholder what the state could not take, under the federal Constitution, from the corporation.

IV. STATE AND FEDERAL RELATIONS—MISCELLANEOUS

An effort of the organized agricultural interests of Massachusetts to have the state daylight-saving act invalidated as violating the federal statute of 1918 fixing standard time failed in the case of Massachusetts State Grange v. Benton.[131] The Court finds no conflict between the two laws. Furthermore, the facts set forth in the case do not constitute an exception to the rule that "no injunction ought to issue against officers of a state clothed with authority to enforce the law in question, unless in a case reasonably free from doubt and when necessary to prevent great and irreparable injury." The tribulations of those who object to daylight saving apparently do not amount to "great and irreparable injury." In a separate opinion Mr. Justice McReynolds expresses the view that the action is beyond the Court's jurisdiction, since it is brought against the state in violation of the Eleventh Amendment.

[130] 272 U. S. 713.
[131] 272 U. S. 525.

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It is now established that state workmen's compensation laws can not apply to injuries received in work upon maritime contracts, where the rights and liabilities of the parties are matters lying within federal admiralty jurisdiction.[132] But the Judicial Code of the United States, while declaring the federal maritime and admiralty jurisdiction to be exclusive, saves "to suitors in all cases the right of a common law remedy where the common law is competent to give it."[133] It is held, therefore, in Messel v. Foundation Co.,[134] that while the plaintiff, injured in maritime employment, could not recover under the Louisiana workmen's compensation act, he could recover under Section 2,315 of the state code which provides: "Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it." This is the Louisiana equivalent of the common law. The plaintiff's recovery under this section will be governed by the principles "which the admiralty law of the United States prescribes, including the applicable section of the Federal Employers' Liability Act (June 5, 1920) incorporated in the maritime law."

[132] Southern Pacific Co. v. Jensen, 244 U. S. 205; Knickerbocker Ice Co. v. Stewart, 253 U. S. 149.

[133] U. S. Code, Title 28, Sec. 41.

[134] 274 U. S. 427.

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LEGISLATIVE NOTES AND REVIEWS

EDITED BY CLYDE L. KING

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The Presidential Primary Since 1924. The legislation of the past four years offers little cheer to those who hoped to see well-drafted presidential primary laws in force in all of the states. The presidential primary has not merely stood still, but since 1916 it has lost ground with each succeeding presidential election. Since the pre-convention campaigns of 1924, two states—Montana and North Carolina[1]—have repealed their presidential primary laws. In the case of Montana, the question of repeal was submitted to the voters and the repeal was upheld by a vote of 77,948 to 57,640.[2] This is significant in the light of the support which Montana voters have accorded the state-wide direct primary when they have been given the opportunity. Five states, in all, have repealed their presidential primary laws,[3] leaving seventeen mandatory laws still in operation.[4] In 1927 repeal in one other state, i.e., North Dakota, was prevented only by veto of the governor.[5]

Two states have adopted amendments which may tend to lessen the effectiveness of their presidential primary laws. New York, which in 1921 provided for the selection of delegates-at-large by state conventions instead of by direct vote of the people, now provides that delegates-at-large (and their alternates) to the national conventions shall be selected by the state committee or by a state convention, "as the rules of such party adopted at a state convention held for the nomination of state officers may prescribe."[6] A 1927 Illinois law takes

[1] 1927, Ch. 82.

[2] November, 1924. Figures furnished by the secretary of state.

[3] Iowa, 1917, Ch. 14; Minnesota, 1917, Ch. 133; Vermont, 1921, No. 9; and Montana and North Carolina as cited above.

[4] The dates of these primaries in 1928 will be as follows:

New Hampshire	March 13	Pennsylvania	April 24
North Dakota	March 20	California	May 1
Michigan	April 2	Maryland	May 7
New York	April 3	Indiana	May 8
Wisconsin	April 3	New Jersey	May 15
Illinois	April 10	Oregon	May 18
Nebraska	April 10	South Dakota	May 22
Massachusetts	April 24	West Virginia	May 29
Ohio	April 24		

[5] See his veto message of March 10, 1927.

[6] 1927, Ch. 362.

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a step in the same direction by providing for the selection of delegates-at-large by the state convention. It also eliminates the provision for printing the presidential preference of each candidate for district delegate after his name on the ballot. The preference vote for president is retained, but it is merely to secure "an expression of the sentiment and will of the party voters."[7]

Important changes of date have been made by two states. New Jersey will hold its state primary in conjunction with the presidential primary in presidential years instead of separately as formerly, and the date has been changed from the fourth Tuesday in April to the third Tuesday in May.[8] In South Dakota the Richards law has been amended to provide for holding the primary (state as well as presidential) the fourth Tuesday in May instead of the fourth Tuesday in March.[9] The dates of the proposal conventions have been pushed back proportionately. This change in date should have a very salutary effect upon the campaign in South Dakota.

Minor changes have been made in the filing requirements in Michigan[10] and Pennsylvania.[11]

In the Democratic convention of 1928 the delegates from presidential primary states will have less than a majority of the votes, and in the Republican convention they will have a bare majority. Taking into consideration the ineffectiveness of the voters' voice in many of the presidential primary states, it is apparent that these primaries cannot possibly control the choice of the convention.

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Results of the Split-Session System of the West Virginia Legislature. Conspicuous among reforms repeatedly urged for the improvement of our state legislative systems is the adoption of the plan of the divided

[7] 1927, Ch. 189.

[8] 1925, Ch. 8.

[9] 1927, pp. 130, 131, 135.

[10] Laws, 1925, Act 351, requiring petitions for placing names of candidates for the presidential preference on the ballot to be signed by 5,000 (instead of 100) eligible voters, and making it impossible for the name of the same individual to appear upon the ballot of more than one party.

[11] 1925, No. 214, changing filing date from not later than four weeks to fifty days prior to the primary.

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session, commonly referred to as the bifurcated or split session.[1] Two states have thus far operated under constitutional provisions making mandatory a system of divided legislative sessions—California since 1911 and West Virginia since 1921. A competent observer, after a study of the California situation, declared that in practice the split session in that state has proved reasonably successful and that "expectations have generally been realized."[2] But the same degree of satisfaction has not been manifested with the results in West Virginia. That expectations have not been realized is indicated by the adoption by large majorities in both houses of the 1927 legislature of an amendment resolution proposing to restore the continuous session. The West Virginia situation, therefore, provokes interest and warrants examination and study.

The theory of the split session is very simple. The essential feature is a legislative recess which divides the short preliminary or initial session from the adjourned or final session. During the initial period bills are introduced and assigned to committees, but no other work is done. Then comes the recess, during which legislators, administrators, and citizens have an opportunity to scrutinize and digest proposed measures. At the adjourned session no new bills may be introduced except with the consent of an extraordinary majority of the two houses.

The primary purpose of this arrangement is to secure more adequate consideration of proposed legislation, thereby bringing about closer conformity between public opinion and legislative action. It is also expected that the legislature will utilize the recess period for investigative purposes, examining the conduct of administration, and informing itself upon important public questions. Prior to the adoption of the bifurcated session in West Virginia, the business of the two houses had so increased from session to session that it became impossible, within the old constitutional limit of forty-five days, to give legislation the careful consideration it deserved. Calendars suffered from the most serious congestion; much time and labor were lost—in committee service, on the floor, and in clerk hire—in the handling of bills that died on the calendar.[3] The failure of successive legislatures to enact much-needed

[1] Senator Nathan Strauss, Jr., of New York City, has urged this plan for the state of New York (New York *Times*, January 10, 1926). Senator George Woodward, of Philadelphia, suggested the idea to the Pennsylvania legislature of 1927.

[2] See article by the late Victor J. West in the *National Municipal Review* of July 1923, on "California—The Home of the Split Session."

[3] For an account of the situation which the split session was intended to correct, see *West Virginia Legislative Handbook, 1919*, pp. 820—821.

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legislation stimulated the search for a reform that would promote more efficient legislative procedure. It was inevitable, therefore, that the citizens of West Virginia should be attracted by the split-session idea.[4]

The constitutional amendment which became effective with the 1921 session provides that the regular meetings of the legislature shall continue for an initial period of fifteen days. During this preliminary session no bills may be passed or rejected, unless such bills are especially recommended by the governor as "necessary to provide for a public emergency." A vote of four-fifths of the members elected to each house is required to enact such emergency measures. At the expiration of the fifteen-day initial period, both houses must recess "until the Wednesday after the second Monday of the March following." When the legislature reassembles, no bill may be introduced in either house without a vote of three-fourths of all the members elected to that house. The final or adjourned session may not continue longer than forty-five days, except with the concurrence of two-thirds of all of the members.[5]

Before examining the operation of this system it is important to call attention to other relevant provisions of the West Virginia constitution. Under power vested in him by the budget amendment of 1918, the governor may by proclamation extend regular sessions of the legislature beyond the 45-day limit in order to complete the enactment of the budget bill.[6] But the legislature during the extended session must confine itself solely to that bill. The governor may also convene extraordinary legislative sessions, although at such times the legislature may

[4] The constitutional provision embodying the plan was submitted to the voters of the state at the general election of 1920. A total of 160,929 votes were cast in favor of the amendment; 122,744 were cast against it. At the same election the total gubernatorial vote was almost double the total vote on the amendment proposal. It is also significant that in twelve of the rural counties the vote was overwhelmingly against the amendment, while in six of the more populous ones the vote was heavily in its favor. In the remaining counties the vote was fairly evenly divided. *West Virginia Legislative Handbook, 1921*, p. 365.

[5] Constitution of West Virginia, Art. VI, Sect. 22. The California provision differs in important respects from the West Virginia provision. In California there is no constitutional restriction on the enactment of legislation during the initial session. Also, in California the initial session may continue for not more than thirty days; the interim may not exceed thirty days; and there is no limitation on the length of the reconvened or final session. The provisions of the two states are the same in the important respect that at the final session no bills may be introduced in either house without the consent of three-fourths of the members. See Constitution of California, Art. IV, Sect. 2.

[6] Art. VI, Sect. 51, Sub-sect. D.

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enter upon no business, except that stated in the governor's proclamation.[7]

In accordance with the several provisions cited, the schedule of regular sessions has been as follows:

Initial Session	Recess	Final Session	
		45-day period	*Adjournment*
1921: January 12–26	48 days	March 16–April 29	April 29
1923: January 10–24	48 days	March 14–April 27	June 14
1925: January 14–28	48 days	March 11–April 24	April 28
1927: January 12–26	48 days	March 16–April 29	May 2

It has already been emphasized that one of the objects of the split session is to speed up the work of the legislature. It is important to note, however, that at no time since the amendment has been in effect have the two houses been able to complete their work within the 45-day period allotted by the constitution. In 1923, in 1925, and again in 1927, it was necessary for the governor to prolong the regular session in order to complete the enactment of the budget bill. In 1921, instead of prolonging the regular session for that purpose, the governor called an extraordinary session to accomplish its enactment. Because of the failure of the legislature, furthermore, to take action in certain matters, the governor, in 1923, in 1925, and in 1927, felt it necessary to summon immediately, after the adjournment of the extended regular session, an extraordinary legislative session.[8]

In order to appraise the situation the writer distributed a questionnaire among some fifty members of the Senate and House of Delegates who had served in more than two regular sessions. While the sentiment among the legislators is overwhelmingly against the split-session arrangement, the idea, nevertheless, finds among them a few ardent supporters. Out of twenty-six replies received in answer to the questionnaire, eighteen legislators stated that practical results had not justified the system and that they favored going back to the continuous session; five defended the arrangement and opposed a return to the continuous session; three doubted whether practical results had justified the plan and were indifferent on the question of a return to the continuous session. In the 1927 legislature, the amendment resolution repealing the split-session provision, which will be submitted to the voters in 1928, passed the Senate by a 22 to 7 vote, one senator not voting; the House

[7] Art. VII, Sect. 7.

[8] *Journals of the Senate and House of Delegates*, 1921, 1923, 1925, 1927.

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adopted the resolution by a 71 to 3 vote, 20 members not voting.[9] A comparison of the vote with the results from the questionnaire suggests that the opinions expressed to the writer by the twenty-six members are fairly representative of the views of the entire number.

One of the advantages claimed for the split session is that it prevents rushing measures through the legislature without adequate consideration by the main body of legislators. When asked if this result had been achieved in West Virginia, members expressed somewhat diverse opinions. Eight declared that it had been achieved, at least to some extent; eighteen were thoroughly convinced that it had not. In order to make a check on actual conditions, the legislative journals of the last four sessions were examined with a view to ascertaining the number of bills passed by both houses under the four-fifths rule at the initial session, the number of bills introduced in both houses under the three-fourths rule at the adjourned session, and the extent to which the enactment of measures was crowded into the last few days of the session.

In order to pass bills at the initial session, not only must they pass by a vote of four-fifths of the members elected to each house, but they must also be specially recommended by the governor as necessary to provide for a public emergency. Both requirements undoubtedly operate as an effective check on the development of any practice that might result in rushing bills through the legislature during the preliminary session. During the initial session of the last four legislatures, the record of the number of emergency measures recommended and the number finally enacted is as follows: (1) 1921: 9 recommended, 7 enacted; (2) 1923: 8 recommended, 6 enacted; (3) 1925: 9 recommended, 8 enacted; (4) 1927: 5 recommended, 3 enacted.

Thus, during the eight years that the plan has been in operation, while the total number of laws enacted averaged 160 per regular session, the number enacted per initial session averaged only six. Of the 24 laws enacted under the four-fifths rule, 17 referred to purely local matters, such as authorizing a special tax levy in a particular county, amending a city charter, or validating the bond issue of a particular school district. A significant test of the efficacy of the four-fifths rule occurred during the meeting of the 1927 legislature, when the governor sought to enforce the enactment of a measure during the initial session which authorized the issuance and sale of fifteen million dollars of bonds to

[9] *Senate Journal*, April 21, 1927; *House Journal*, April 27, 1927.

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raise money for road construction purposes. While the measure received the necessary four-fifths vote in the House of Delegates, the Senate refused concurrence on the ground that the legislature should not precipitate the taxpayers of the state into a further obligation without serious deliberation, nor until the legislature had taken stock of what had been accomplished under the original bond amendment. Since the bill as proposed also provided for a radical departure from the principles which had previously governed the distribution of the road funds, the Senate decided that the bill should go over until the final session.[10] Legislators of long experience concede that the passage of bills at the initial session under the four-fifths rule is rare.

When the legislature reassembles for the adjourned session, no bills may be introduced in either house without the approval of three-fourths of all the members elected to that house. An examination of the journals shows that comparatively few bills are introduced under this rule at the second or adjourned sessions. The following table summarizes the record for the last four legislatures:

Bills Introduced (*Final Session*)

	Senate	House	Enacted
1921:	6	12	13
1923:	3	14	14
1925:	7	18	16
1927:	10	17	23

When it is remembered that the total number of bills introduced during the period under consideration (1921–1927) has averaged one thousand per regular session, an average of 22 bills introduced at each adjourned session does not seem excessive. An examination of the subject-matter of the latter reveals that almost without exception they pertain to insignificant details of purely local concern.

The practice of crowding the final enactment of measures into the last week of the session has not been eliminated. In 1927, for example, 84 of the 196 laws enacted, or approximately 43 per cent, were finally enacted during the last week of the session. On the last day of the session, 39 laws, or 20 per cent of the total, received final approval. Furthermore, practically all bills of general importance are finally passed during the last week of the session. In 1927, 92 measures had passed both houses six days previous to adjournment; but of this number, 75 were purely

[10] *Senate Journal*, January 26, 1927, pp. 48–49.

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local measures. An argument usually advanced in favor of the split session is that it will expedite and make more effective legislative consideration of the budget. But it has failed to accomplish this result in West Virginia. At no time since the arrangement has been in operation has it been possible to complete the enactment of the budget bill without either extending the regular session beyond the 45-day limit or convening a special session for that purpose.

Essential to the satisfactory operation of the split-session principle is effective use of the recess period. If legislation more in accord with public sentiment is to result, both citizens and legislators must avail themselves of the opportunity which the recess affords to study proposed measures. Several members reported use of the interim to explain bills to their constituents. One member, for example, wrote that he had called a mass-meeting in his county, which was largely attended; that he had become acquainted with public sentiment and had defeated laws which the home folks were against. But fully two-thirds of the members interviewed were firmly of the opinion that neither legislators nor citizens used the interim to any considerable extent for the purpose intended, that is, to study and discuss proposed legislation. As one member expressed it, "They are interested during the actual working days. The intermission is a recess—like in our school days." Several members admitted that they had not even read the bills at the time when the second session convened. It is doubtless true that for the great majority of both members and citizens the legislative recess is a legislative vacation.

It would be a mistake to conclude, however, that there is a complete suspension of legislative activity and of public interest in legislative matters during the interim period. In two respects, at least, the writer feels that the recess is used to advantage. While it is a matter of regret that the regular standing committees of the legislature do not meet during the intermission, it should be noted that special investigating committees are active during this period. In 1925, joint resolutions authorized the appointment of joint legislative committees to investigate conditions at the state penitentiary, to study the building program of the state, and to investigate charges of corruption and fraud in the construction of the state capitol. Again, at the 1927 initial session, the legislature authorized joint committees to report to the adjourned session on the management of the workmen's compensation fund and on the work of the codification commission. At the same session, when the House of Delegates refused to coöperate in authorizing a joint

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committee to investigate the expenditures by the state road commission of the fifty-million dollar road bond issue, the Senate created a special committee of its own for that purpose. While it is difficult to evaluate the services of some interim committees, occasionally these committees, through the publicity given their proceedings and findings, illuminate pressing public questions in a wholesome way, particularly as they relate to the execution of public policy. The senate investigation of the road commission and the joint investigation of the workmen's compensation fund during the 1927 session effectively demonstrated the practical utility of the recess period. Both of these committees rendered meritorious service in informing legislators and citizens on the conduct of administration and on the wisdom of legislative policy.

The other respect in which, in the opinion of the writer, the recess is used to advantage has to do with the activities of the newspapers. One of the objects of the recess is to give the newspapers an opportunity to explain proposed legislation to the citizens. While in the early years of the experiment the press gave comparatively little publicity to measures during the recess, it is significant that of late this defect has been largely corrected. During the 48 days of the legislative interval of the 1927 legislature, the Wheeling *Intelligencer* published twenty-four editorials and some sixty articles explaining and criticizing the bills introduced. The Charleston *Gazette* printed almost an equal amount of material, always supplementing articles with vigorous editorial comment on the wisdom or unwisdom of proposed measures. At the 1927 initial session, eight correspondents representing seventeen newspapers and the Associated Press reported the work of the legislature to the citizens of the state. It was also at the 1927 initial session that the special tax commission authorized by the 1925 legislature submitted its report. During the recess the newspapers explained in detail the contents of the report, as well as the several bills designed to carry out the recommendations of the commission. The apparent failure of the split-session plan to accomplish results in West Virginia can hardly be attributed to any unwillingness on the part of the newspapers of the state to coöperate.

It is important to examine at this point specific objections offered by those who believe that the bifurcated session in West Virginia has been a failure. Governor Morgan, in his message to the legislature in 1923, and again in 1925, advocated the repeal of the amendment of 1920, declaring that the practical results had not justified the claim that the "double-header" session would give the public an opportunity

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to study proposed legislation during the recess interval. According to the governor's statement, "many of the most important bills are introduced in skeleton form and the public remains unadvised as to the character of proposed legislation."[11] The governor obviously was prejudiced against the experiment from the start. It is true, nevertheless, that bills sometimes undergo such changes in committee that the original bill is scarcely recognizable. "For example, at our last legislature," writes one member, "a local road bill was changed into a general bill relating to employment of convict labor. The sponsor was very indignant at having his bill changed, saying his innocent child had grown up to be a convict." It also happens sometimes that members introduce bills at the initial session to get the approval of the public, and later introduce amendments which make them very objectionable. The clerk of the House for the 1927 initial session lists as skeleton bills 38 out of the 623 house bills introduced.[12] None of the Senate bills were so listed. One member estimates that about five per cent of the bills introduced at the initial session are skeleton bills. While all members interviewed admitted that the practice of introducing skeleton bills exists to some extent, the majority declare that it is not a common practice. Also there is no evidence to prove that "many of the most important bills," to use the governor's phrase, are introduced in skeleton form.

The second and final article in Governor Morgan's indictment of the split session is the extra expense involved. Many of the members who condemn the plan likewise make much of the additional burden to the taxpayers. But this does not impress the writer as a very convincing criticism. The additional expense entailed on the basis of a very liberal estimate approximates $75,000.[13] The largest item, however, included in this amount is the expenditure for printing and mailing bills. Under the continuous session system, only those bills were printed which were favorably reported by the committee to which they were referred, which was approximately one-third of the total number introduced. Such a practice, however, has vicious potentialities. The extra expense required for the printing and mailing of bills seems highly legitimate, if the law-making process is to be at least reasonably democratic. The only real difference in cost, therefore, between the split session and the con-

[11] *Public Documents of West Virginia*, 1923, Vol. I, pp. 38–39.

[12] *Abstract and Synopsis of Senate and House Bills and Joint Resolutions, Legislature of West Virginia, Regular Session, 1927.*

[13] Wheeling *Intelligencer*, March 22, 1927.

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tinuous session is that the former plan doubles the mileage expense of the members. This extra cost does not exceed $5,000.[14]

Another criticism of the split-session plan as it operates in West Virginia relates to the large number of bills that are poured into the legislative hopper during the two weeks of the initial period. The record of the number of Senate and House bills presented during the last five regular sessions is as follows: 1919, 556; 1921, 904; 1923, 1,083; 1925, 1,102; 1927, 1,001. From this it is manifest that with the advent of the split session in 1921 a very perceptible increase in the number of bills occurred. With such a mass of bills to consider, the theory of the system begins to break down. And this situation is complicated by the additional fact that the majority of the bills introduced propose amendments to existing laws. For example, in 1925 fully fifty per cent, and in 1927 over 60 per cent, of the bills introduced were amending bills. Under the circumstances, therefore, only bills proposing new laws can be taken at their face value; all others must be compared with existing laws in order to tell what changes are suggested. Very few people will take time and trouble to check up to see what changes a bill contemplates. But the large number of bills is, after all, not the fault of the split-session plan, although the large number of bills unquestionably makes that plan very difficult to operate. The real source of the trouble is the existence of a constitutional system that does not provide an effective substitute for the present system of local and special legislation.

In concluding this enumeration of criticisms of the split-session plan, it is important to mention a number of miscellaneous comments. There is considerable complaint because of the failure on the part of the printer to get the bills out promptly. Invariably it is time for the reconvening of the second session before all of them have been printed. A particularly serious fault of the system is the failure of the standing committees to meet until the beginning of the adjourned session. The public generally does not take any interest until the several bills are at least up in the various committees for their recommendation. It is stated, however, that while the average citizen does not study bills during the intermission, corporations employing legal talent do so, and are prepared to combat them or urge their passage according as their interests are affected.

Many members object to the split session on the ground that it is a great inconvenience to members. Several members believe that the

[14] *Journal of the House*, March 17, 1927; *Journal of the Senate*, March 16, 1927.

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initial meeting is a waste of time, since bills might as well be mailed to the clerks. There is additional waste of time when the final session convenes, because it usually takes from two to three weeks to get the members down to work. Those members who defend the split session insist that it has resulted in greater publicity for proposed legislation and that it has done away with legislative "jobbery" at the end of the session. Even among those members who want to go back to the continuous session, it is admitted that the present system has resulted in more publicity for proposed measures. Finally—and this may be to the credit of the plan—the politicians of the state, as a group, are unsympathetic toward the split session and are among its bitterest critics.

Our appraisal thus far has concerned itself mainly with specific criticisms of the system, and with observations on the application of the letter and spirit of the principle. But, after all, the real test is the quality of the legislative product. Has the split session brought about the enactment of much-needed legislation? Has it produced laws that conform to popular sentiment? Has it resulted in any increase of satisfaction among the citizens of the state with the outcome of legislative sessions?

Viewed from the standpoint of results achieved, it is unquestionably true that the split session has proved a dismal failure. It has not prevented the enactment of bad legislation; it has not accomplished the enactment of good legislation. There is an abundance of evidence to substantiate this charge of legislative ineptitude and incompetence. The public utilities, and particularly the natural-resource industries, have successfully evaded taxation for a generation.[15] At the same time these predatory interests are rapidly depleting the state's rich mineral resources. While the legislature appropriates the amount of $1,000,000 biennially to maintain a state constabulary to protect the mine workers, it takes no steps to provide adequate safeguards for the lives of the mine workers.[16] In a single year the state reports 450 fatal casualties from mine disasters. In 1921, in order to meet a serious financial stringency, the legislature passed a law providing a general gross sales tax. In commenting on this tax, the National Industrial Conference Board report declares: "It would appear to be difficult to conceive of a more obnoxious tax than one on general expenditure."[17]

[15] Wheeling *Intelligencer*, March 24, 1927.

[16] *West Virginia Legislative Handbook, 1926*, p. 285.

[17] *The Tax Problem in West Virginia*, National Industrial Conference Board, 1925, p. 178.

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Expressions of dissatisfaction with the outcome of legislative sessions crowd the editorial pages of the newspapers at the close of every session. Space permits the inclusion of only a few excerpts. After reviewing the session of 1927, the Wheeling *Intelligencer* concludes as follows: "The depressing farce just ended at Charleston has disgusted every intelligent voter in West Virginia."[18] The Charleston *Gazette*, in a caustic editorial, comments in this wise on the achievements of the 1927 session: "Where the deliberations of the Senate and House might have been utilized in the creation of some kind of laws tending to the advancement of the state, the members were engaged in long-winded and sweaty oratorical warfare on freakish matters such as the length of a woman's skirt, the Bible bill, the "monkey" (evolution) bill, labels on vinegar bottles, and a raft of other nonsense. In short, if you eliminate the local and freakish measures from the bare 100 laws that have been enacted in both houses during the past forty-five days, you can count on the fingers of your hands the law-makers' accomplishments, and you would need scarcely one of those fingers to enumerate the big, visionary, and constructive measures."[19]

One need not probe very deeply into the legislative situation in West Virginia to discover that the people of the state were grasping at a straw when they accepted the split-session plan as a device to extricate them from a condition of legislative futility. There are numerous factors that make any successful application of the idea impossible. Particularly serious is the waste of time on special and local legislation. Only about one-fourth of the bills introduced deal with matters of general state importance. Instead of adopting general municipal codes or inaugurating municipal home rule, West Virginia clings to the archaic special-charter system of municipal government. As a consequence, the legislature spends a vast amount of time in transacting business that should properly be left to city councils. On the other hand, the members are impotent when it comes to legislating on matters of general importance. The constitution imposes a legislative strait-jacket that virtually compels the legislature to confine its activities to trivialities. It is quite impossible, for instance, for the legislature to correct taxation evils under existing constitutional provisions requiring uniformity in taxation. One might also cite the absurdity of the 45-day limit on the length of the final sessions. While such limitations were originally

[18] May 2, 1927.
[19] April 25, 1927.

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intended to prevent legislative abuses, they have been aptly characterized by Professor Holcombe as remedies that cure disease only by killing the patient. As long as powerful vested interests, furthermore, dominate the scene at Charleston, there is little hope of legislative emancipation by any such device as the split session.

In conclusion it becomes important, therefore, to emphasize that such a reform can accomplish very little of itself. Under the adverse conditions existing in West Virginia, it was inconceivable from the start that the split session should remedy the situation. Consequently, after eight years it has not made any material difference, one way or the other. While one discovers a partial observance of the letter, and even of the spirit, of the split-session principle, the obstacles it encounters are too numerous to permit of its successful application. The most that one can say is that it secures a little more publicity for proposed legislation. For West Virginia, this may be a mark of progress.

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A New Index of State Session Laws. Efforts to secure an index to the state laws extend back just a half-century, to the attempt of the American Bar Association in 1877 to secure an annual review of important legislation of general interest enacted by the states. The most successful undertaking was the annual "Summary and Index of State Legislation Throughout the Union," published by the New York State Library for the years 1890–1908. It was brought to an end by the disastrous fire of March 29, 1911, in the state-house at Albany which destroyed the material for 1909 and 1910. In the conditions which prevailed for some time after the fire it was impossible to renew the work, and its place has remained unfilled in spite of the increasing demand and the almost constant agitation of the subject.

In the Sixty-ninth Congress there were 23,250 bills and 638 resolutions, a grand total of 23,888 introduced, of which 1,422 were enacted into law, the output for the two sessions filling about 2,000 pages. Since most of the states now meet in biennial sessions, it is a fair comparison to say that for each biennium the legislative output of the forty-eight states is twenty-four times as great. As a matter of fact, for the two years 1923–24 the total number of pages in a complete set of the Session Laws is about 42,588. This would include the issues for two years for each of the six states (Georgia, Massachusetts, New Jersey, New York, Rhode Island, South Carolina) still having annual sessions.

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The situation is quite overwhelming. The need of an index to this mass of laws has indeed been a crying one for many years. The burden of preparing such an index should not be borne by any single state. The interest is nation-wide, and the undertaking seems properly a function of the federal government. There is another reason why the federal government is justified in taking up this work. At present fully twenty-five federal government offices, departments, and bureaus are trying to keep up with current state legislation that falls within the scope of their interests. There are at least ten associations of national importance which also are trying to keep track of current state laws.

The subject has been before Congress for a long period and there have been several hearings. Finally it came to a head quite suddenly late in the last session, resulting in an act approved February 10, 1927, as follows:

"Sec. 1. That the Librarian of Congress is hereby authorized and directed to prepare and report to Congress biennially an index and digest to the legislation of the states of the United States enacted during the biennium. Sec. 2. There is hereby authorized to be appropriated annually for carrying out the provisions of this act the sum of $30,000 to remain available until expended."

An item providing for the necessary appropriation was included in the Second Urgent Deficiency Bill, but was lost in the Senate filibuster at the end of the session. Congress will doubtless make the appropriation which it has authorized, and the Library authorities hope to be fully at work early in the new year. They have not, however, been obliged to remain wholly idle. During the recent long recess they were able to accomplish a good deal by way of preparation for the work.

Almost from its beginning in 1917, the Legislative Reference Service at the Library of Congress has been indexing the state laws on all subjects likely to come under discussion in Congress. It is on the experience thus gained that the Library proposes to base the new state law index. The existing index has heretofore been carried on along broad lines, in the effort to avoid the hopeless labyrinth which too minute indexing of such a mass of material would entail, yet in sufficient minuteness to furnish a key under one alphabet to all general current state legislation within the defined range.

To indicate more exactly the scope of this present index, the following statement of the types of acts which have been excluded is presented: (1) Local, i.e., all acts applying to a specified town, county, etc., or to a specified class, such as cities of the first class, counties of the second

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class, etc.; (2) Temporary, i.e., all acts limited in the duration of their effect unless important for some special reasons, such as temporary war legislation, during the war period; (3) Institutions, i.e., all acts applying to a single institution; (4) Private, i.e., all personal legislation, including acts applying to a specified corporation or society; (5) Appropriations; (6) Officers, i.e., all acts prescribing the duties, salaries, etc., of officers, except such as directly affect the subject-matter with which they deal; for instance, an act requiring an officer to make monthly reports would not be indexed, while one requiring local health inspectors to inspect meat would be indexed under meat; (7) Administrative, except as affecting indexed subjects; (8) Courts, except juvenile courts, which are indexed under "Children."

In the revision and expansion of the index to meet the new viewpoint the Library plans to modify these exclusions, and the following tentative rules are suggested: 1. Local. Named localities should still be excluded, possibly excepting the five or six largest cities. The problem in this group is the proper handling of specified classes. There is unlimited variation in the methods of classification in the different states. Up to now, a city, county, or village of a given class has been excluded. The tentative new plan calls for a preliminary survey of classifications in all states. Where a state has not more than three classes of cities, counties, etc., all classes are to be indexed; where, as in California, there is a separate class for each county, each class is to be dealt with the same as a named county; and where the state is divided into too many units to include all, but has a broader classification than in California, classes one and two are to be indexed. Recommendations from those interested for meeting this problem will be most acceptable. 2. Temporary. Acts limited to a definite duration have been excluded unless appearing to be of special interest. While this method necessarily involves the personal equation too much, it should be continued. Here is where information sent in by outsiders familiar with the purpose of the act would be of special value. State laws on this subject are temporary in form, and it is only through channels other than the laws themselves that the indexer can know that such matters are too vital to be excluded. 3. Institutions. To be dealt with as heretofore. 4. Private. The same. 5. Appropriations. Appropriation acts, where a sum is appropriated for the year or biennium only, have been wholly excluded. This policy should be continued. 6. Officers. Laws prescribing salaries, office organization, etc., have been excluded. From a legislative reference or general research point of view they are of little value, but

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presumably they will be of value to state bureaus, etc., and should now be included. It is a question whether the better way to handle this type of law is under headings already in use, e.g., number of employees, salaries, etc., of state board of health under "Public Health," or under a new scheme of administrative headings. If the latter is considered advisable, suggestions from those who are interested in this type of law are desired. In the fields in which the index has been functioning for ten years, experience has qualified the Library to judge of the practical value of any recommendations which may be offered; but on this subject, if the interested parties are willing to present a scheme the Library would accept it and carry it out as nearly as possible. 7. Administrative. As heretofore, but modified by 6 preceding. 8. Courts. Hitherto laws prescribing rules for a superior court, a justice's court, or a municipal court have been excluded. It is the plan now to make a single entry for such acts under "Actions at Law—Specified Courts."

During the 1927 recess Miss Margaret W. Stewart, who has been in charge of the state law index of the Legislative Reference Service since its beginning, and who will initiate the new work, prepared a "Tentative List of Subject Headings and Index Rules for the State Law Index" which has been distributed to some of those who, it is hoped, will be sufficiently interested to examine it and make suggestions for additions and corrections. The best idea of the scope and variety of the subject index now proposed can be obtained by a careful scrutiny of this tentative list.

Heretofore the session laws have been indexed as they came into the Library, the few indexers employed covering all subjects in turn repeatedly. This method loses the advantage of specialization in subject. It is proposed to develop the new index on the basis of specialized indexing. Each volume will first be examined and the chapters classified as to subject-matter, and the chapters dealing with a given subject will then be turned over to an indexer specially equipped to handle that subject. This method will necessitate much more checking and verifying than the method at present employed, to make sure that no acts are omitted or wrongly allocated, and that the references are correct. But the gain in exactness and rapidity will compensate for the additional trouble to secure correctness of reference.

One of the most difficult problems will be that of keeping in touch with what is considered important in new legislation, in order to satisfy the expectations of various groups in the preparation of the annual digest. The Library expects, of course, to do all that it can to keep in

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touch with current discussions in published material, but often by the time such material is available it becomes a matter of "locking the barn door after the horse is stolen." For instance, there are constantly recurring statutes concerning a conference between two states on water rights or fishing rights in a certain stream. Ordinarily these are not of the slightest general interest, and for digest purposes would, presumably, not be included in a short review of the year's legislation. At the time the Library was indexing the first authorization for conferences between the states on the Delaware River project it had no warning that this strictly local legislation was to develop into a much-discussed topic. In 1926 several states amended their inheritance tax laws to conform to the Supreme Court decision in the case of Frick vs. Pennsylvania. These amendments amounted to little more than changing a "shall" to a "shall not," and as a matter of routine indexing there would be no reason for counting these amendments of special interest. In such cases as the last it takes a considerable amount of very difficult study of the point involved to determine that a new principle has been applied, even after attention has been called to the significance of the change. These problems apply to the proposed digest, rather than to the index itself.

The question has been asked, "Will information concerning current legislation be made available? Will the information be available while the sessions are in progress, or immediately after, and before the index is published?" The answer is in the negative. The act says: "The Librarian of Congress is hereby authorized and directed to prepare and to report to Congress biennially an index to the legislation of the states of the United States enacted during the biennium." There is no mention of an information service. Such a feature would have made it impossible to pass the bill. It will not do to jeopardize the whole enterprise by undertaking an unauthorized activity. If a beginning were once made, the whole indexing staff would soon be working on reports on special topics, and when the time came to make the final report there would be no index. Doubtless the current material will be open to such examination as will not interfere with the work of the indexers, though this is a matter that only the future can determine.

There is the question, too, whether anything is to be done with the codes and session laws previous to the current biennium. This query can be answered at present only to the extent of saying that the subject has been under discussion. The intended method of indexing will, it is hoped, develop experts in certain subjects, taxation for example; and, as Professor Chamberlain pointed out at a hearing on the bill, in

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answer to an inquiry from a member of the committee, a digest of the state laws, on taxation for example, covering all the laws in force could most likely be produced and would prove a most valuable compilation. At any rate, it is expected that the expert indexers will in time be able to cover many important subjects in this way.

If the imagination is allowed a little play, two important points soon develop out of this index. Never before has such an opportunity for standardizing the subject terminology of the law presented itself. The lack of standardization of terms is one of the chief stumbling blocks in the way of research work in state laws. With the coöperation of interested groups, it ought to be possible to make the state index a medium for unification of subject headings used in state indexes. In a consolidated index such as that proposed, it is necessary to use a broad, inclusive term, and presumably in each state it is necessary to use the exact term in use in that state. However, a standard term can be adopted from which each state will refer to the specific title used within the state. To illustrate: the title "Small Loan Banks" has been adopted in the Library index to include the various types of financial organizations resulting from the regulation of small loans. These are called "Morris Plan" banks in some states, in others industrial banks, provident loan associations, etc.—some eight or nine different terms in all. If the title "Small Loan Banks" is acceptable as a standard, and each state index carries a cross-reference out from this title to the specific title in use in the state, the riddle of determining where this type of act is to be found in the statutes of the various states is solved.

The index should serve to make apparent the wide divergence in terms now in use, and it is to be hoped that it will ultimately serve to unify them. If interested associations and groups, such as bankers and insurance associations, could agree on a representative term to designate a special type of organization for which new legislation is enacted and make their decision available so that the act or acts would appear in the biennial index under that term, the index itself would serve as a medium for establishing that term in other states subsequently adopting similar laws. The present situation is illustrated by a recent study of building and loan associations in the United States which lists one hundred and fifty names by which these associations are known!

The second point is that by the proposed method of indexing from a classified collection of the laws the indexers may possibly be able to lay the foundation for a complete collection of state laws classified by

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subject. The advantage of such a collection to an investigator studying any phase of social, economic, or other development would be very great.

H. H. B. MEYER.

Legislative Reference Service,
Library of Congress.

The Work of the American Legislators' Association. The American Legislators' Association was organized in 1925 and held its first annual meeting following that of the American Bar Association in Denver in July, 1926. The second meeting preceded that of the American Bar Association in Buffalo in August, 1927. The Association is composed of members of legislatures in the various states, and its principal accomplishment to the present time has been a study of the legislative field and the formulation of a concrete program. This work has now been completed, and the Association hopes during the coming year to begin carrying out its proposals in a vigorous manner.

For generations past there has been widespread criticism of legislative conditions. The organization of this Association is an attempt to give a constructive turn to this criticism. The importance of the field is indicated by the fact that our state governments alone own property worth more than one and a half billion dollars and annually spend more than thirteen hundred million dollars. And of course our state legislation affects the activities of more than one hundred million individuals. It is the feeling of the new organization that there should be a dynamic agency to give currency to all deserving proposals designed to improve the law-making process in the various states. The fact is recognized, however, that mere procedural changes can never make the situation satisfactory, and that the improvement of the personnel of our legislatures is among the fundamental needs.

In an article prepared by the president of the Association after the Buffalo meeting, the following passage appears:

"We entirely concur in the statement which is continually reiterated by all thinking Americans that our legislatures contain many members who lack the mentality, the training, and the disinterested motives which should characterize legislators. We believe, however, that the mere repetition of contemptuous criticism and supercilious ridicule makes this situation worse rather than better. This is not the method which an intelligent employer would adopt toward those in his employ. We believe that there are definite and comprehensible reasons on account of which our states fail to secure a reasonable proportion of

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legislators of the best type. We believe that no state can hope to induce a large number of capable, educated, responsible men to offer their services for legislative work unless the state is prepared to do its part as any other employer must do, by offering each man who will serve adequate pay, a contract of employment for a term sufficiently long to justify him in making the expenditure of time, money, and effort necessary to secure the position, a position of responsibility and dignity commensurate with the labor involved, adequate assistance in the performance of his task, and the coöperation of other reputable individuals in his work. . . . . In many states these results cannot be accomplished without constitutional amendments, which will require campaigns of public education. We propose to encourage all efforts necessary to bring about conditions which will render legislative service attractive to citizens of the best types. We consider it apparent that with the advent of more high-class legislators, many unsatisfactory conditions would be corrected by them without the assistance of any association such as ours. On the other hand, we believe that the better the personnel of our legislatures becomes, the more serviceable will our work prove to be."

The program of the Association as adopted at the Buffalo meeting comprises six features, which were formulated as follows:

1. A clearing house for the legislative reference bureaus of the various states. It seems desirable that every state should maintain a legislative reference bureau, or some corresponding office, as a part of the state government, to render assistance to legislators who desire it in matters of research and drafting. It is a part of the program of this Association to advocate the maintenance of such a bureau by every state. There are already more than a score of them. As their number increases, it will become more necessary that some office should function as a clearing house in order to avoid duplication and to expedite the researches of each bureau.

2. An informational switch-board through which any legislator or the director of any reference bureau can "plug in," and at once be connected with the best source of information in the United States concerning his current problem. It is not so much the plan to compile data as to make more readily available the vast amount of work already being done by legislative reference bureaus and by many other responsible agencies. Our main compilation will concern the best sources of information.

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3. A periodical sent to every one of the 7,500 legislators, with information concerning (a) the recommendations of the Commissioners on Uniform State Laws, and of other organizations such as the American Bar Association, the American Medical Association, the National Education Association, and the National Conference on Social Work, including our own committees; (b) new reports, periodicals, and books of possible value to legislators; (c) noteworthy innovations in legislative matters; and (d) noteworthy methods of attaining legislative efficiency.

4. An annual meeting of legislators on the Monday of the week during which the Bar Association meets. It is safe to say that from one-fifth to one-third of our legislators are attorneys; in other words, from 1,500 to 2,500 lawyers hold office as legislators today. It is moderate to anticipate that eventually five or ten per cent of them—from 75 to 250 individuals—will combine attendance at this meeting with attendance at the American Bar Association meeting.

5. A Legislative Assembly at the time of this annual meeting, being a session of ninety-six legislators, one elected by each branch of each legislature. The main purpose of this Assembly will be to consider the proposals of the Commissioners on Uniform State Laws, and to consider proposals for interstate compacts.

6. A dozen committees, each dealing with an important subject of legislative concern, and each having an advisory board of twenty individuals who are recognized as national authorities in the committee's field. Thus we hope that some day we shall have a functioning committee on health composed of ninety-six legislators, most of whom are the chairmen of the medical or health committees of their respective houses in the state legislatures; and that, to counsel it, this committee will have an advisory board of twenty nationally prominent physicians, heads of health departments, and officials of national organizations concerned with health matters. In fact, our twelve advisory boards are already organized, and they contain over 200 men of genuine distinction. The health committee is to meet at the time of the annual meeting of the American Medical Association; the committee on social welfare at the time of the National Conference on Social Work; the taxation committee at the time of the meeting of the National Tax Association.

HENRY W. TOLL.

State Senate, Denver, Colorado.

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NOTES ON RURAL LOCAL GOVERNMENT

EDITED BY THOMAS H. REED
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In introducing for the first time in the *American Political Science Review* notes on rural local government, it seems fitting to make some general observations upon the lack of information concerning the organization and operation of county and township government on the part of members of our profession. Municipal government has long been the subject of careful study, and numerous agencies exist for the collection of material on that subject. In particular, the National Municipal League has served as an agency through which changes and developments in municipal government in all parts of the country have been communicated to those most interested in them. The recent establishment of its research department serving as a clearing house for the bureaus of municipal research has still farther advanced its service in that direction. In addition, there are several good periodicals to which any one in search of trustworthy material on municipal government may turn. The case of county and township government is entirely different. Courses in rural local government are offered in a few universities, and there are some individuals who know a good deal about the historical development of the subject. There are few indeed, however, who know much about the details of rural local government outside their own state. One of the principal reasons for the establishment of a department of rural local government notes in the *Review* is to offer an opportunity for the periodic—at least annual—publication, in available form, of information that may come from various parts of the country. It may lead in time to the development of some organization actively interested in the improvement of county government. The notes offered in the present number relate to scattered phases and make no pretense of covering the field. It is hoped that next year numerous contributions will be available. In this way only can the department offer a real service to the membership of the American Political Science Association. (T.H.R.)

The Proposed Charters for Westchester County, New York. The county has long been regarded as the unexplored and unreformed area of American politics. While the reformers have been busy effecting changes in the nation and in the states the county has been virtually untouched, and its governmental machinery exists today much as it

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was two generations ago. However, the vast changes which are taking place in what President Wilson used to refer to as "the processes of our common life," coupled with the widespread demand for economy in our governmental units, are likely soon to force a measure of reform on the reluctant counties. Strong evidence of the necessity for, and of the practical difficulty of, bringing it to pass have recently come from the state of New York. In his message of January 5, 1927, Governor Smith said: "One year ago, I made a definite proposal that a study of county government be made in order to effect a consolidation of counties wherever practicable and an elimination of the very palpable waste in conducting county government throughout the state. I renew that recommendation." And then he added: "In fact, the cost of supporting these units of government [counties] is increasing $8,000,000 to $10,000,000 yearly, and the burden of that taxation is the real one which people in the rural communities find so heavy."

On November 8, 1927, by a vote of 45,730 to 33,902, the people of Westchester county defeated for the second time a proposal for the modernization of their county government. So far, outside of California, little has happened in the way of actual achievement of county reform. Consolidation is only a project in New York State. But there, and in certain other states, the driving force of economy is likely in time to bring results in this matter. This is certainly so in those areas where a marked decrease in population has made the support of several county governments in a sparsely settled region a genuine financial burden to the citizens. A case in point is the upper peninsula of Michigan, where the decline of the copper mining industry has considerably reduced the population from the boom days in which the present county units were created.

Progress in the consolidation of counties and the abolition of units now no longer needed will be much easier in some parts of the country than in others. Counties differ among themselves in social unity, the possession of genuine traditions, and the development of a sense of solidarity. Most American counties are, as Napoleon said of Italy in the late eighteenth century, merely "geographical expressions." In regions of this sort, county consolidation should encounter no great difficulty and, under the stimulus of financial saving and that diminution of distances which the automobile has brought, should be achieved without great effort. Of course, a county which has a distinguished history, common traditions, social unity, and the glamour of distinguished names, will look askance at submergence in another political

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unit or merging with a comparatively alien territory. One cannot think for a minute of Fairfax county, Virginia, or Lancaster county, Pennsylvania, surrendering its identity.

Turning from the question of consolidation to that of reform of organization, nothing more significant has happened in the past few years than the repeated attempts made to reconstruct the government of Westchester county, New York. Although the immediate reforms proposed for this county have failed of adoption, twice by popular vote and once by veto of the governor, the attempt is worthy of study because of its intelligence, and also because it represents a type of reform which will be attempted in other places, probably with eventual success.

Westchester county lies on the mainland immediately north of Greater New York. It has a population of half a million people, distributed over four hundred and forty-eight square miles, and includes within its borders four cities and twenty-three villages. It is sometimes facetiously referred to as "the dormitory of New York City."

The first of the so-called Westchester county charters was embodied in an act of the legislature of the state passed on April 9, 1925 (Ch. 587, Session Laws of 1925), and known as the Westchester County Government Act. This act was passed in conformity with Article 3, Section 267, of the New York constitution, which says, in part, that "there shall be in each county, except in a county wholly included in a city, a board of supervisors, to be composed of such members and elected in such manner and for such period, as is or may be provided by law." This particular act concerning Westchester county was made possible by a constitutional amendment adopted in 1921 which permitted the legislature, subject to local referendum, to provide special types of government for Nassau and Westchester counties because of their large populations, their proximity to New York City, and the prevailing dissatisfaction with their form of county government. The proposed charter was defeated at the polls on November 3, 1925.

The 1925 charter for Westchester county was framed by a nonpartisan commission and afterwards submitted to the state legislature. It constituted almost the high-water mark of proposed county reform in America up to that time, and is an earnest and an indication of the lines which county reform may follow in the next generation. Considering what a remarkable document it was, the wonder is not that it was defeated but that it polled as many affirmative votes as it did. It contained the elements of reform long desired in the American county. It provided for a county executive in whom was centralized the govern-

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ment of the county, and who in turn was removable by the governor. It consolidated the work of the county in a few departments, abolished some of the antiquated offices, and established a definite budget system.

Under the Westchester charter there continued to be a board of supervisors, consisting of the supervisor of each town and the supervisors elected in each city. The board in Westchester has a total of forty-one members. Under the new form this board was confined entirely to legislative matters, and even some matters of this character were taken away from it. The executive power of the county was vested in the county president and in other executive officers and departments provided by law or by ordinance of the board of supervisors. There was created a new official for America in the county president. He was to be elected by popular vote for a term of four years and to receive a salary of $15,000 a year. The qualifications specified a citizen of the United States who had been a resident of the county for five years prior to his election. The county president could be removed from office by the governor, although he must be given a copy of the charges against him and must have an opportunity to be heard in his own defense.

Thus there was created a public office the occupant of which in many ways resembled the mayor rather than the manager of a city. Like the latter, he was presumed to give all of his time to the job, and he was to be paid a salary fifty per cent greater than that received by the governor of the state. Although the county president might be a professional, he could not come from any region other than that which he governed. Also he was to be responsible to no local governing board in the sense that the city manager is. It is hard to see how he could avoid getting mixed up to some extent in local politics.

The statute defined the powers of the county president as being (1) to see that the county officers and departments faithfully performed their duties; (2) to see that the laws of the state pertaining to the affairs and government of the county, and the ordinances of the board of supervisors, were executed and enforced within the county; (3) to communicate by written message to the board of supervisors at least once a year a statement of the finances and of the general condition of the affairs of the county, with such recommendations in relation thereto as he might deem proper; (4) to give such information in relation to the same as such board might from time to time require; (5) to receive and examine into all complaints made against any county officer for neglect of duty or malfeasance in office; (6) to examine the books and papers of any officer, employee, or department of the county, and as often as

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he might deem proper to appoint one or more competent persons to examine, without notice, the accounts of any county officer or department, and the money, securities, and property belonging to the county in the possession or charge of any county officer or department, and to report the result of such examination; (7) to subpoena witnesses and compel the production of books, records, papers, and documents, and administer oaths to witnesses, and take affidavits, in relation to the affairs of the county, in any matter concerning which a power or duty was conferred or imposed upon him by this chapter, any other law, or any ordinance of the board of supervisors; (8) to cause a monthly audit to be made of all moneys received and paid out by the commissioner of finance; and (9) to perform such other duties as might be prescribed in this chapter or other law or by ordinance of the board of supervisors, not inconsistent with law.

There was also to be a vice-president of the county, chosen by popular election for a term of four years and receiving an annual salary of $7,500. When by reason of sickness or absence from the county the president was unable to perform his duties, the vice-president was to act as president and exercise all the presidential power and receive the emoluments of the office. In ordinary times one of the chief duties of the vice-president was to preside over the board of county supervisors.

There were set up in the county eight departments of administration. The heads of six of these, i.e., welfare, law, public works and buildings, engineering, weights and measures, and health, were to be appointed by the president. The confirmation of the board of supervisors was not necessary to complete the appointment; and these six officials were to hold office at the pleasure of the president.

The elective offices of treasurer and comptroller were abolished and their functions devolved upon an elective commissioner of finance. The office of coroner of Westchester county was abolished and the duties were to be exercised by a medical examiner, who was to be appointed by the board of supervisors. This was the only one of the eight departments where the supervisors had any voice in the selection of the directing official. The medical examiner was required to be a physician of at least three years' practical experience in his profession within the county, and was to receive such salary as the board of estimate and apportionment might determine. The constitutional offices of sheriff, county clerk, district attorney, and county judge were to be filled by popular election as before.

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One of the interesting institutions which the charter set up within the county was the board of estimate and apportionment. Here one sees the influence of the Greater City. The board was to consist of the president, vice-president, and the commissioner of finance. The president was to be the chairman of the board and the clerk of the supervisors its secretary. Unlike its metropolitan counterpart, there was equal voting within the board. The board was to submit to the supervisors, before the first of December of each year, an estimate of the amounts necessary to run the county for the next year. The board fixed the salary and compensation of county officials save where it was fixed by law. The only change the board of supervisors could make in the budget was to strike out or reduce items, and they were unable to do this in the case of salary items. The board of estimate could create or abolish positions in all departments. It also served as a board of contract and supply and had extensive investigative authority.

When the proposed charter was discussed by the electorate in October and November, 1925, various objections were made to it. Some of them have much more validity than others. In the main, they were as follows: (1) It was claimed that the charter curtailed home rule in the cities, villages, and towns. (2) Some people said that it gave the county president excessive powers. (3) It was even stated that it was merely a move in the direction of annexation to New York City. (4) The conservatives said the whole thing was entirely too revolutionary. (5) It was further alleged that it would destroy representative government because it would reduce the board of supervisors to a rubber stamp. (6) Some opponents pointed out that it failed to state which powers were legislative and which administrative. (7) Certain of the more practical-minded claimed that the power of patronage in the hands of the county president would permit him to build up a powerful political machine.

The referendum was held November 3, 1925, the same day that there was a mayoralty election in the Greater City. The charter was defeated by a majority of 5,275, there being 34,216 negative votes and 28,941 affirmative votes. It was defeated in the townships. Three of the four cities—Yonkers, White Plains, and Mount Vernon—voted in its favor.

In 1926 another charter for the county was passed by the legislature. However, this one did not please Governor Smith and he vetoed the bill, giving two reasons for so doing. He said that the charter proponents, in an attempt to modify the first charter to meet the demands of some of the people who had opposed it, had weakened the usefulness of the charter by giving too little executive authority to the man to whom the

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responsibility was to be given. Also he objected to the proposed charter because of its failure to provide any measure of home rule for Westchester county.

In his message of March 16, 1927, Governor Smith again brought the case of Westchester and Nassau counties to the attention of the legislature, and in his message of that date said: "I am informed that an amendment has been prepared affecting Westchester and Nassau which will greatly improve the present conditions in the constitution. I strongly recommend that you adopt this amendment so that these two counties may be given an opportunity to take the steps for county reorganization which I am sure will ultimately benefit the entire state. There has also been presented to you a new charter for Westchester county which it is proposed to adopt immediately so as to avoid the long delay which must necessarily result if you wait until a new constitutional amendment is adopted. Last year I vetoed the proposed Westchester charter in part because of its failure to provide any measure of home rule for the county. This defect will be cured by the adoption of the constitutional amendment to which I have referred and which provides that changes of a fundamental nature in a charter after it is once adopted can be made only by referendum vote of the people of the county."

The amendment referred to by the governor was brought up at the 1927 session of the legislature and will again be brought up in the 1928 session. The proposed Westchester charter was passed and signed by the governor (Session Laws of New York, 1927, Chapter 566). This act of 1927 was essentially the same as the charter which was submitted to the electorate in 1925 and rejected by them. There were a few minor changes; for example, the board of supervisors was to be able to make emergency appropriations for the sheriff and the district attorney. Also, to the board of estimate and apportionment as constituted under the act of 1925 were added the county attorney and the county engineer. Also, the sewer commission was exempted from the provisions of the act, which was not the case in 1925. Finally, the act provided that the form of government might be abandoned on the initiative of the board of supervisors or of ten per cent of the voters at the last general election, upon approval by the electors.

This act of 1927 was submitted to a vote on November 8, 1927. There was considerable sentiment for it among people who believed that a municipal corporation with assets of $1,250,000,000 should have an orderly and responsible head to run the government. Very vigorous

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objections were made by persons who felt that home rule was not yet assured to the inhabitants of the county. These people pointed out that the charter was simply a legislative act which might be amended by another session of the legislature without any consideration of the sentiments of the inhabitants of the county. While admitting the need of an improved type of government, they objected to the change in advance of the adoption of an amendment to the state constitution. In the election of November 8, 33,902 votes were polled in favor of the charter and 45,730 against it, giving an unfavorable majority of 11,828. The returns on the charter by cities and townships, as reported to the Republican county headquarters, compared with the official vote cast on the charter of 1925 as follows:

	1927		*1925*	
	For	Against	For	Against
Bedford	589	971	464	734
Cortland	1,173	2,703	629	2,593
Eastchester	1,348	1,333	1,065	799
Greenburgh	2,097	3,644	1,505	2,732
Harrison	331	835	384	479
Lewisboro	140	243	103	256
Mamaroneck	1,042	1,770	717	1,288
Mount Pleasant	1,416	2,261	1,048	2,081
Newcastle	380	749	397	542
Northcastle	277	244	188	236
North Salem	93	272	77	277
Ossining	1,058	1,682	919	1,822
Pelham	587	1,666	666	983
Pound Ridge	43	142	60	109
Rye	2,119	2,925	1,910	2,043
Scarsdale	540	1,052	420	381
Somers	174	282	119	283
Yorktown	183	629	108	589
Mount Vernon	4,290	4,373	3,717	3,300
New Rochelle	3,477	4,100	2,560	3,701
White Plains	3,065	2,903	2,492	1,848
Yonkers	9,525	10,951	9,167	7,270

Although failing in two general elections, it is inevitable that a charter along the lines of the act of 1925 or 1927 will in a few years be adopted and put into operation in Westchester county. As Governor Smith has well phrased it, in speaking of certain aspects of the charter: "These

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are improvements which have been sought by interested authorities in all the counties of the state and the experiment in Westchester will be of tremendous advantage elsewhere."

PAUL MILLER CUNCANNON.

University of Michigan.

Home Rule for Westchester and Nassau Counties. The constitutional amendment referred to by Dr. Cuncannon as passed by the 1927 session of the legislature adds to existing provisions for forms of government for Westchester and Nassau the following:

"After the adoption of such form of government by the county, no law which abolishes or creates an elective office or changes the voting or veto power of or the method of removing an elective officer, changes the term of office or reduces the salary of an elective officer during his term of office, abolishes, transfers or curtails any power of an elective officer, changes the form or composition of a legislative body, or provides a new charter for such county, shall become effective without adoption and approval by the electors of such county. No other special or local law affecting the counties of Westchester or Nassau, or either, shall be passed by the legislature except in conformity with the provisions of this section. After any such bill has been passed by both branches of the legislature, the house in which it originated shall immediately transmit a certified copy thereof to the clerk of the board of supervisors or other governing elective body of such county, and within fifteen days thereafter such clerk shall return such bill to the clerk of the house from which it was sent, or if the session of the legislature at which such bill was passed has terminated, to the governor, with the clerk's certificate thereon, stating whether the county has or has not accepted the same. The legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill before the board of supervisors or other governing elective body of the county before action thereon, and the board of supervisors or other governing elective body shall act for the county as to such bill, provided that if under such form of government there shall be an executive head of the county, the concurrence of such executive head shall also be required for the acceptance of such bill by the county. Whenever any such bill is accepted as herein provided, it shall be subject, as are other bills, to the action of the governor. No such bill shall take effect until at least sixty days after the approval by the governor, or its final adoption by the legislature notwithstanding the disapproval of the governor; nor unless and until adopted and

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approved by the electors of the county, if within said sixty days there shall be filed with the county clerk of the county a petition protesting against such bill executed by electors of the county in number equal to at least five per centum of the total number of votes cast in the county for governor at the last gubernatorial election. Whenever, during the session at which it was passed, any such bill is returned without the acceptance of the county, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the legislature and it shall then be subject as are other bills to the action of the governor, but shall not take effect unless and until adopted and approved by the electors of the county. In every such law which has been accepted by the county to which it relates, the title shall be followed by the words 'accepted by the county;' in every such law which is passed without such acceptance, by the words 'passed without the acceptance of the county.'"

Five Years' Progress of the Westchester County Park Commission. Although, for the reasons indicated in Dr. Cuncannon's note, Westchester county has failed to adopt a modern, or at least quasi-modern, plan of county organization, it has concurrently succeeded most magnificently in one of the most significant county efforts of recent years. The Westchester County Park Commission was first organized under legislative authorization in 1922. It consists of six members appointed by the board of supervisors. The Commission took over, to begin with, the portion of the Bronx River Parkway entirely in Westchester county and immediately proceeded to develop a system of parks and parkways distributed over the whole 448 square miles of the county area. The Bronx River Parkway has been paralleled by other parkways following a general north and south direction along the banks of Saw Mill River, Sprain Brook, Hutchinson River, etc. In the northern part of the county extensive reservations of wild land have been taken over. Sea-shore parks have been developed at Glen Island and Rye Beach. At Tibbetts Brook Park, just north of the New York city line, in Yonkers, fine swimming pools and bath houses have been erected. At White Plains, the county seat, a beautiful county-center building has been projected, and at least a portion of the money has been appropriated for its construction.

The total area of parks and parkways now under the jurisdiction of the Commission is 16,189 acres. Leaving out of consideration the Bronx River Parkway, the county of Westchester has expended $39,232,000

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on the acquisition and improvement of these parks and parkways. Not only has the work been extensive, but the planning of it has been admirable. It is generally regarded as the most significant park development that has taken place in recent years. A great increase has occurred in the assessed valuation of Westchester county, for which the Commission is inclined to take a large share of the credit. There seems no good reason to doubt that the opening of these attractive parkways penetrating into the heart of the county has greatly improved the residential qualities of the region. In America we have become accustomed to look for very little that is far-sighted and constructive from county governments. It is encouraging to make note of this admirable achievement. (T. H. R.)

The North Carolina Legislature Takes Advanced Ground with Regard to County Government. At its 1927 session the legislature of North Carolina adopted an act of first importance in the trend toward better county government in the United States.[1] The act constitutes by far the most important constructive step of the past year. It provides for two forms of county government, the county commissioner form and the manager form. The county commissioner form is the current form of county government, but the act provides for the adoption of modifications on petition of ten per cent of the persons voting for governor at the last election and approval by the electors of the county. The modifications which may be adopted in this manner relate, first, to the number of commissioners, which may be increased from three to five or decreased from five to three; second, to the term of office, by fixing the term of commissioners at two years; and third, to the term of office and composition of the board. Under this last provision, "at the first election, if the board is to have three members, one may be elected for two years, one for four years, and one for six years, but if the board is to have five members, two may be elected for two years, two for four years, and one for six years." This plan contemplates a six-year overlapping term for county commissioners.

The manager form may be adopted by the board of county commissioners on their own initiative, or it may be adopted by popular vote upon a petition of ten per cent of those voting for governor at the last election. The board of commissioners is given considerable latitude in the selection of a manager. It may appoint a non-resident of the county,

[1] *Public Laws of North Carolina, Session of 1927*, Chap. 91.

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it may confer the managership upon the chairman of the board of county commissioners, or it may confer the powers of manager upon any other officer or agent of the county. The duties of the manager are those usual among managers of cities, except that the power of appointment must be exercised "with the approval of the county commissioners." Of course, the manager's power under no circumstances extends to officers whose election or appointment is otherwise provided for by law.

The act goes farther than the mere organization of county government. It requires that the board provide "so far as possible, consistent with law, for unifying fiscal management of county affairs, for preserving the sources of revenue, for safeguarding the collection of all revenue, for guarding adequately all expenditures, for securing proper accounting of all funds, and for preserving the physical property of the county." Such a provision, of course, is somewhat in the nature of a pious wish which may not result in action, but it is important as indicative of the new attitude toward county government. The board of commissioners is required to purchase supplies in such a manner as to prevent waste and duplication and to obtain the advantages of purchasing in large quantities. To that end it is authorized to appoint a county purchasing agent.

A very interesting feature of the act is the creation of a county government advisory commission. This commission is to consist of five members appointed by the governor, "who are qualified by knowledge and experience to advise and assist the county officials in the proper administration of the county government. At least three of the members of the commission shall be selected from the boards of county commissioners then in office." The term is to be fixed by the governor, but is not to exceed four years. The members of the commission serve without compensation except their actual expenses. The duties of the commission are set forth in the act as follows: "The duties of the commission shall be to take under consideration the whole subject of county administration; to advise with the county commissioners as to the best methods of administering the county business; to prepare and recommend to the governing authorities of the various counties simple and efficient methods of accounting, together with blanks, books, and other necessary improvements; to suggest such changes in the organization of the departments of the county government as will best promote the public interests, and to render assistance in carrying the same into operation. They may make such recommendations to the governor from time to time as they may deem advisable as to changes in the

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general laws controlling county government, and such recommendations may be submitted by the governor, upon his approval, to the next meeting of the General Assembly."

What is perhaps the most important feature of the plan, however, is the fact that the commission is authorized to appoint an executive secretary whose duties include visiting the counties of the state and advising and assisting the "county commissioners and other county officers in providing a competent, economical, and efficient administration." The salaries of the executive secretary and other employees of the commission are to be fixed by the commission, by and with the advice and consent of the governor. The provision for a full-time secretary gives some guarantee that the functions of the county government advisory commission will be vigorously and effectively performed. The final provision of the act is one for a codification of existing county government laws by the attorney-general of the state.

(T. H. R.)

Virginia Moves Toward Modern County Organization. The so-called "Governor Byrd amendments" to the constitution of Virginia, submitted to the extra session of the 1927 legislature, contain the following significant addition to Section 110 relating to county officers: "Notwithstanding the provisions of this article, the General Assembly may by general law provide for complete forms of county organization and government different from that provided for in this article, to become effective in any county when submitted to the qualified voters thereof in an election held for such purpose and approved by a majority of those voting thereon."

The following section relating to magisterial districts and the election of supervisors is also amended to be subject to the provisions of Section 110. Thus the way is opened for the provision of model forms of county government by the General Assembly, which may be adopted by the people of the counties as fast as public sentiment warrants.

Of course neither the North Carolina nor the Virginia provisions even approximate the freedom granted to California counties many years ago. In that state Los Angeles and several other counties have already adopted "home rule" county charters. Los Angeles, in particular, has proceeded further, in the development of a highly organized county government to care for the enormous semi-urban population which clusters around the city of the same name, than has any other county in the country. (T. H. R.)

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FOREIGN GOVERNMENTS AND POLITICS

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The British Trade Disputes Act of 1927. One does not speak of the rights of American trade unions glibly or in off-hand fashion. Unlike the English policy of defining the rights of labor by legislative enactment, our legislatures, both federal and state, have been particularly slow to make such definition. Such predicability as the labor law has thus far assumed has been largely the work of the courts. Here, in other words, we discover the rights of trade unions in the opinions of the courts; in England, we have been accustomed to look to the statute-book rather than to judicial opinions. Comparatively, English labor law has at least enjoyed the merit of being reasonably predicable. The acts of 1859,[1] 1871,[2] 1875,[3] 1906,[4] and 1913[5] were all designed either to make the existing law more definite or to overturn a judicial interpretation of the law adverse to labor. Thus, by the year 1927 the law was rather definite. The statutes contained statements of what labor could or could not do. A reading of the recent Trade Disputes and Trade Unions Act of July 29, 1927,[6] raises the question whether this legislation marks a change in the English policy of fixing the rights of labor by legislative definition.

The immediate occasion for the recent act was the general strike of May, 1926. Introduced and rushed through Parliament by the present Conservative government, this measure failed to receive the preliminary study and consideration that preceded the introduction of the acts of 1871 and 1906. In the case of these measures, royal commissions were appointed to ascertain the existing law relating to trade unions, in order that amendments might be proposed with knowledge of their probable effects.[7] In view of the extraordinary circumstances that

[1] 22 Vict. c. 24 (1859).
[2] 34 and 35 Vict. c. 32 (1871).
[3] 38 and 39 Vict. c. 86 (1875).
[4] 6 Edw. VII c. 47 (1906).
[5] 2 and 3 Geo. V c. 30 (1913).
[6] 17 and 18 Geo. V c. 22 (1927).
[7] A memorandum report of the findings of the royal commission of 1869 may be found in Sir William Erle's *The Law Relating to Trade Unions* (London, 1869). Sir William was chairman of the commission and formerly chief justice in the Common Pleas. Cf. Report of the Royal Commission on Trade Disputes and Trade Combinations, 1906. Cd. 2,825.

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brought about its introduction and the strong opposition which the recent bill aroused, it would seem that an impartial investigation of the whole situation might well have been made before the proposal of new legislation. In the course of the debates, three questions especially needed clarification: (1) What are the facts as to the abuses of trade unions? (2) Are the abuses contrary to existing law? (3) If abuses exist, are they such as are capable of being dealt with by fresh legislation?

Many Britishers, more particularly members of the Liberal party, were inclined to say, "Why not leave things alone? Why arouse controversy at a time when coöperation is especially required between employers and employed?" The feeling among this group was that the costly failure of the general strike (which was clearly recognized by trade union leaders) was sufficient indication that legislation was unnecessary to prevent the success of such an assault.[8] Rather this was a time when a peaceful policy of conciliation might be more effective in laying the foundations for future industrial peace than a vindictive spirit that would put labor in its place by means of legislation. Such a course, in the opinion of this group, served only to rally all the suspicion and revive all the bitterness that time was beginning to allay.

Sir Douglas Hogg, attorney-general and chief spokesman for the government, laid down four reasons why amendment to the existing law was urgent. First, a general strike or an attempt to coerce the community should be made illegal; second, intimidation should be made illegal; third, no one should be compelled against his will to contribute to the funds of any political party; fourth, civil servants should pay their entire allegiance to the state.[9] The present bill was, therefore, addressed to the attainment of these four objects.

While it is obviously true that the bill was not confined to the general strike, these four propositions appear so harmless, so fair and justifiable, that one may find it difficult to conceive how any one, even members of the Labor party, could possibly object to them. And yet around this bill was waged one of the most stubborn parliamentary battles in modern British history. Questions of the timeliness, expediency, and scope of the bill, especially the scope, provoked lengthy and heated controversy. Although it was pretty generally agreed that the general strike ought to be outlawed, there were a few, even in Conservative

[8] *Parliamentary Debates* (5th Series), Vol. 205, p. 1793.
[9] *Ibid.*, p. 1305.

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ranks, who were frank to confess that the government was open to valid criticism for dealing with this subject by way of legislation.[10] Had not a court of law, as well as prominent legal authorities, gone on record on the question of the illegality of the general strike? In the case of the National Seamen's and Firemen's Union v. Reed, Mr. Justice Astbury had spoken directly on the point:

"The so-called general strike," he said, "called by the Trades Union Congress is illegal and contrary to law, and those persons inciting or taking part in it are not protected by the Trade Disputes Act of 1906. No trade dispute has been alleged or shown to exist in any of the unions affected, except in the miners' case, and no trade dispute does or can exist between the Trades Union Congress on the one hand and the government and the nation on the other. The orders of the Trades Union Congress above referred to are therefore unlawful, and the defendants are at law acting illegally in obeying them, and can be restrained by their own union from doing so."[11]

On the same day on which this opinion was delivered, Sir John Simon, an eminent Liberal lawyer, commented on the decision in a speech before the House of Commons and declared in no less certain terms that the general strike, whatever the provocation or explanation, was not a trade dispute at all. The Trade Disputes Act was discussed in the House of Commons in the first year that Sir John was a member. "What Parliament had in mind in 1906," he said, "when it spoke of a 'trade dispute' and guaranteed immunity for trade union fund, was a strike of a lawful character."

It is also interesting to note that six years prior to the general strike, in the calm of industrial peace, an outstanding barrister, a member of

[10] London *Times*, April 26, 1927. See the speech of Sir Arthur Steel-Maitland.

[11] As to the law on trade union benefits, Justice Astbury continued: "No member of the plaintiff union or any other trade unionist in this country can lose his trade union benefits by refusing to obey unlawful orders, and the orders of the Trade Union Congress and the unions who are acting in obedience thereto in bringing about the so-called general strike are unlawful orders, and the plaintiff union is entitled to have this fact made clear and brought to the attention of its members." Further, the justice explained: "The trade union funds in this country are held in a fiduciary capacity and cannot legally be used for or depleted by paying strike pay to any member who illegally ceases to work and breaks his contract without justification in pursuance of orders which are unlawful." These propositions are reënacted in Clause 2 of the Trade Disputes and Trade Unions Act, 1927. This opinion delivered in the High Court of Justice, Chancery Division, May 11, 1926, is reported in full in Appendix II of Sir John Simon's collection of speeches published by the Macmillan Company under the title *The General Strike*.

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Parliament, and an authority on the law relating to trade unions, Sir Henry Slesser, ventured to express an opinion on the legality of the general strike. "There has recently arisen for consideration," he wrote, "the question how far a strike for political objects—'direct action,' as the journalists have called it—that is a strike to interfere with or constrain the government in conduct which trade unions do not approve, can be said to be a strike in contemplation or futherance of a trade dispute. This matter has fortunately not yet had to be decided, but I have very little doubt that such a strike would not be covered by the words in the definition in the Trade Disputes Act."[12]

Conceding, then, that under the existing law the general strike was illegal, what justification could the government set up for enacting legislation against it? Was not the law as it stood sufficient? The minister of labor, Sir Arthur Steel-Maitland, stating the government's case for the bill, answered this question by saying that the purpose of the government in dealing with this subject by parliamentary statute was to make the law so clear that there could be no misunderstanding of it. Very few people, he declared, thought that the general strike was illegal or understood that the immunities given to trade unions by the act of 1906 did not apply to it. Much the same confusion existed, the minister added, about peaceful picketing, and it was good to have the whole subject cleared up so that the law might not be broken through ignorance. In other words, in the mind of the minister of labor, the purpose of the government in enacting this bill was to declare the existing law. "There is not one proposition of the bill," he explained, "which restricts in any way the legitimate activities of trade unions"[13] —not realizing, apparently, that there may be considerable difference of opinion on the question of what are "legitimate activities." Sir Douglas Hogg, questioned time after time as to the scope of the bill, made observations of a similar character.

These explanations and interpretations of the bill did not satisfy representatives of the Labor party, nor are they likely to satisfy any one who reads the act carefully. It seems reasonable to believe that the Conservative government had a broader purpose in introducing the measure. Indeed, the words of Prime Minister Baldwin and Sir Robert Horne afford rather convincing evidence of it. "For a century past," Mr. Baldwin began, "there has been frequent trade union legis-

[12] *The Law Relating to Trade Unions* (London, 1921), pp. 72–73.
[13] London *Times*, April 26, 1927, p. 9.

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lation, and the last important act passed was the act of 1906—nearly a generation ago. That act put the law . . . . in a position that few of us who took part in the 1906 election expected to see it take. . . . . The majority [of the royal commission appointed to inquire into the subject of the law affecting trade unions] did not propose to put the unions in the position in which they were put by the ultimate legislation, and the bill, as originally introduced, did not do so either. But for some reason which has remained a mystery to all outside the Liberal party until this day, and is still, the attorney-general was thrown over by his own prime minister, within a couple of days, and the bill took a far more extreme form than, as I say, had been expected in the country. That bill . . . . put associations, to whatever class they belonged, in what a layman would call a position of irresponsibility; that is to say, they ceased to be liable in certain circumstances for wrong actions which they might commit. One would have thought that being in a position of irresponsibility of that kind, the moral responsibility became all the greater, because there were in that legislation certain seeds of trouble which developed in subsequent years."[14]

Continuing, Mr. Baldwin said that there had been a great change since 1906, both in the attitude of and the ground covered by trade unions. The emphasis had distinctly moved in the last twenty years from industrial action to political action; the tendency had been to proceed from constitutional action to direct action. In some unions, Mr. Baldwin said, power had been gradually getting in the hands of what is today called the "minority movement." Individual picketing had at times given way to mass picketing. This, he believed, followed from a view, so common in England, that under the act of 1906, when once a strike was declared anything that men on strike did was legal. In the 1926 strike, he continued, there were many instances of intimidation that were actually against the law, but which were considered to be within the law by those who had committed the offense.[15]

[14] *Parliamentary Debates* (5th Series), Vol. 205, pp. 1654–1655.

[15] This line of reasoning is strikingly similar to that of Chief Justice Taft in the case of United Mine Workers v. Coronado Coal Co., 259 U. S. 344 (1922). Here, in the face of judicial precedent to the contrary, the Chief Justice declared largely by way of an *obiter dictum* that trade unions are legal entities, and, as such, are suable in their corporate capacity. Any other ruling, he argued, would produce a situation wherein "the legislature has authorized the creation of numerous bodies of men capable of owning great wealth and of acting by agents with absolutely no responsibility for the wrongs that they may do to other persons by the use of that wealth and the employment of those agents." Chief Justice Taft cited, in this connection,

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These words speak for themselves. True it is that the prime minister felt the need for making the existing law more certain. At the same time, he stated as a fact that the act of 1906, as finally adopted, had the support of neither the country nor a majority of the royal commission. It was, in his opinion, a mistake in 1906; it was, by reason of changed conditions, a more serious mistake in 1927. Subsequent years, and especially the coal strike of 1926, only served to confirm this opinion.

Using somewhat less guarded language, Sir Robert Horne observed: "Trade unions stand today in this country in a position of privilege which is enjoyed by no other similar organization in any part of the world and which puts them beyond the obligations of legal conduct which are imposed on the ordinary citizen. They had no right to these privileges; they ought never to have had them. They have used them with infinite hurt to the country and they ought to be taken away."[16] On another occasion Sir Robert expressed what he believed to be the effect of the bill: "We must all appreciate," he said, "the fact that any trade union leader must naturally show his hostility to this bill. It makes modifications in privileges which have been long enjoyed by trade unions, and it proceeds to curb certain powers which they have used now for many years."[17]

It is hardly necessary to explain that these views as to the purpose and effect of the bill are not those stated by Attorney-General Hogg in introducing the measure. The sole reason for its introduction, according to the attorney-general, was to prevent the recurrence of the deplorable events of May, 1926—to declare and make known the existing law. No material changes in the law were contemplated.[18] By its efficacy in that direction the act must primarily be judged.

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the famous Taff Vale case (1901) A. C. 426, the first English case on record in which the question of the liability of a trade union was distinctly raised and in which a court of law pronounced a trade union liable in action for tort. The effect of the Trade Disputes Act of 1906 was to nullify the Taff Vale decision and grant trade unions certain immunity from the law of torts. It was against this very type of immunity that both Chief Justice Taft and Prime Minister Baldwin were arguing. It should be noted, however, that Taft was speaking as a member of the Supreme Court of the United States, and his opinion has been followed in lower federal and state courts. Mr. Baldwin was speaking as a member of the House of Commons and advocating legislation to cover the point. His objections to the existing law in this regard are covered in the recent act.

[16] London *Times*, April 26, 1927.

[17] *Parliamentary Debates* (5th Series), Vol. 205, p. 1507.

[18] *Ibid.*,p. 1305.

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Debates on the bill centered chiefly around Clauses 1 and 3. Designed to declare illegal any strike with an "object other than or in addition to the furtherance of a trade dispute"—that is, a general strike—Clause 1, as it appears in the act, goes further and deals with any strikes which occur in more than one "trade or industry" if it is "designed or calculated to coerce the government either directly or by inflicting hardship upon the community."[19] Under these provisions, Labor leaders and a prominent English authority on the law relating to trade unions agree that the sympathetic strike is outlawed. Strikes of this character were admittedly lawful under the existing law, and it was repeatedly stated in the House of Commons that there was no intention to alter the law on this subject. The legal history of trade unions demonstrates, however, both in England and America, that the purposes of those who make the laws may go very far astray when these same laws are interpreted by the courts. It was not intended, in 1871, that trade unions, as such, should be suable in tort. But thirty years later they were held to be suable. It was perhaps not intended in 1890 that the Sherman Anti-Trust Act should be applicable to trade unions. But the Supreme Court, in 1908, held that the language of the act embraced the activities of labor.

A careful perusal of this clause, embogged as it is with many pitfalls, makes it difficult to predict what interpretation the courts will place upon it. Without attempting to catalogue all the difficulties which the clause presents, who can say with assurance, for instance, what the object of a trade dispute is? The object of a strike is presumably the object of those taking part in it. Even they may not be entirely agreed; in fact, they may be diametrically opposed. To allege the existence of an object other than the furtherance of a trade dispute may offer a very perplexing problem. The terms "designed" and "calculated" clearly do not mean the same thing. Precisely what is the difference between them? The act does not say. Very few strikes, it may be argued, are designed to coerce the government or inflict hardship upon the community; yet almost any strike is calculated to have this effect.

Again, what is meant by "inflicting hardship upon the community"? Public inconvenience is an incident of practically every strike. When a large part of the population has to walk to and from work on account of a transport strike, considerable inconvenience, if not hardship, is

[19] A similar provision with reference to the lockout is also provided in this clause. The bill, as originally framed, however, was directed merely against illegal strikes.

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likely to result. Whether such inconvenience or hardship is within the meaning of this clause is another question. Under existing law, any strike "from whatever motive or whatever purpose (including sympathetic or secondary strikes) apart from crime or breach of contract" was legal. Questions as to its object, or as to whether it occurred in more than one trade or industry, or as to whether it coerced the government or worked hardship upon the community, did not call for an answer. These questions will certainly demand consideration under the present act. It is quite conceivable that a magistrate or court may hold any strike, whether sympathetic or otherwise, in a public utility such as transport, gas, light, and so forth, or a strike in any basic industry, such as mining, to be calculated to coerce the government or inflict hardship on the community, and therefore criminal.

It is important to note, moreover, that Section 2 under this clause makes any person taking part in an illegal strike "liable on summary conviction to a fine of not more than ten pounds or imprisonment for not more than three months, or on conviction on indictment to imprisonment for a term not exceeding two years." Nor does the fact that a strike is illegal merely expose the striker to fine or criminal punishment. Section 4 denies all the protection conferred upon trade-union officials and trade-union funds by the Trade Disputes Act of 1906 and the Emergency Powers Act of 1920.[20] Furthermore, any application of the funds of a trade union in contravention of this clause may, under Clause 7, be restrained by an injunction upon application of the attorney-general. This provision was regarded in the House of Commons as an importation from the United States and should be of special interest to American students.

As for Clause 3, which has to do with the prevention of "intimidation," much the same observation can be made as in the case of Clause 1. The type of language used in the two clauses is almost identical. It is simply a question of what interpretation the courts will give the loose and somewhat vague language employed.[21] The law as it stood prior to the present act allowed workers, in pursuance of an industrial dispute, to go a long way toward persuading a minority of their fellow-workers, and others, to abide by the decision of the majority. The acts of 1875 and 1906 set definite bounds within which picketing could properly be

[20] 10 and 11 George V c. 55 (1920).

[21] Interesting discussion of this clause will be found in *Parliamentary Debates* (5th Series), Vol. 206, p. 1607.

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carried on. According to the old definition, these limits were not reached otherwise than by acts of violence or threatened violence. Under the present act the definition of intimidation is less certain (and apparently broader) in character. The "expression 'to intimidate' means to cause in the mind of a person reasonable apprehension of injury to him or to any member of his family, or to any of his dependents, or of violence or damage to any person or property, and the expression 'injury' includes injury to a person in respect of his business, occupation, employment, or other source of income, and includes any actionable wrong."

Clearly this definition may be construed by a court sufficiently literal and sufficiently unsympathetic so as to bring the most innocent conduct within the ambit of this clause. It would be quite easy to cause reasonable apprehension in the minds of certain persons. Add to vagueness of definition the fact that injury includes other than material or physical injury, and you have language that is scarcely declaratory of the existing law. Moreover, persons are denied the right to obtain or communicate information, or to persuade or induce any person to work or to abstain from working, "*in such a manner as to be calculated to intimidate.*"[22] Nor does it matter that such persons are acting in pursuance of a lawful strike. This is enough to show that "peaceful picketing" will hereafter be a more dangerous activity than in the past.

Mention should be made of Clauses 4 and 5, which make specific changes in the law. As the law stood, members of trade unions were subject to a levy for political purposes unless they took a definite step of "contracting out." Clause 4 of the present act declares that they shall not be subject to the political levy unless they give notice in writing of their willingness to contribute to that fund.[23] Although this change seems neither unfair nor revolutionary, it aroused the hostility of the Labor party, since they regarded it as a political stroke the results of which accrue to the advantage of the Conservative party. They feared that individual inertia would deprive the party of the subscriptions of many who were not at all averse to contributing to the political fund of Labor.

During the general strike it came as a distinct shock to find that civil servants were subjected to pressure, from trade unions or from the Trade Union Congress with which the unions were affiliated, to turn against

[22] Italics are mine.

[23] For the debates on this clause see *Parliamentary Debates* (5th Series), Vol. 206, p. 2060 ff.

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the state. This was an intolerable situation. A civil servant could not be loyal to the state, which was his duty, and to an outside organization operating against the state. Clause 5 deals with this subject.[24] The act, quite reasonably, permits civil servants to have organizations within the service, but prohibits affiliation with outside trade or political organizations.

No further analysis is needed to show that the present act, far from being declaratory of the existing law, may ultimately be found to have reversed or altered the law in regard to certain valuable rights of trade unionists.[25] Seeking to make the general strike illegal, the government by the use of vague and uncertain phraseology went, as it appears, beyond the necessities of the case.[26] Clause 1, as has been shown, may be interpreted in such a manner as seriously to encroach upon a fundamental principle which has long been recognized in the statute law of England, namely, the right to strike. Seeking to prevent intimidation, against which the existing law made adequate provision, the government introduced language in Clause 3 which will render picketing, however conducted, altogether unsafe. Clauses 4 and 5, as already noted, make definite changes in the standing law.

An essential requirement of a good statute is sufficient definiteness and certainty that the law-abiding man may know what he may do and what he may not do. To elucidate and to clarify the law was indeed one of the main reasons for passing the present act. Surprising as it may seem, the chief complaint that can be made against the statute is that "it does not clarify; it muddles old obscurities and creates new ones."[27] How can statutory provisions embodying as a crucial test of their application such vague expressions as "designed or calculated to coerce the government," "inflict hardship upon the community," etc., comply with the elementary requirement of certainty.

[24] *Parliamentary Debates* (5th Series), Vol. 207, p. 35 ff

[25] Members of the Labor party feel sure that the effect of the act will be disastrous. "There cannot be the slightest doubt," one member declared, "that if this bill does become law the workers of this nation will be thrown back into a position exactly identical with that which they occupied 103 years ago, before the repeal of the 'combination laws' under the government of William Pitt." *Parliamentary Debates* (5th Series), Vol. 205, p. 1579.

[26] The fact is that the language of this statute is such that its effect cannot be definitely known until it is interpreted by a court of law. In this connection, see the speech of Sir Henry Slesser, *Parliamentary Debates*, Vol. 206, p. 1015 ff.

[27] From a speech of Mr. Lloyd-George. *Parliamentary Debates* (5th Series), Vol. 205, p. 1804.

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It will be remembered that the employment of elastic and uncertain phraseology was the curse of trade unionism from 1824 to 1871, when the terms "molestation" and "obstruction" were construed by the judges to mean almost anything. Members of the Labor party freely declared that the present bill was deliberately drafted so as to be full of ambiguities, to the end that the courts might place their own interpretation upon it.[28] Although this accusation may well be questioned, it is undoubtedly true that the language in which the act is couched leaves a great deal to the discretion of the judges. This fact was sufficient to arouse the fears of the Labor party, since the courts have not heretofore shown themselves particularly favorable to the interests of the workingman.

Herein lies the chief significance of the act. Beginning in the early fourteenth century, the English policy has been that of determining the rights of labor by legislative definition or enactment. Since 1825, the history of trade unionism in relation to Parliament has been one of widening recognition and of increasing power and influence under sanction of the law. During this same period there were important judicial decisions which seriously restricted the rights, powers, and functions of trade unions. Comparatively, then, Parliament has always taken a broader view of the rights of labor than have the courts. In fact, several of the most important parliamentary acts were designed to correct or reverse judicial decisions, so as to strengthen and protect the interests of trade unions. It has been left to the present government to reverse the policy of a hundred years by enacting not only a measure which invades certain established rights of labor, but a measure so loosely phrased as to leave its ultimate scope for the final determination of the courts. Representatives of the government, it is true, declared time after time that no material changes in the law were intended. But such pronouncements, as every one knows, will count for little or nothing in a court of law, whose function is to construe, not the intentions of His Majesty's ministers, but the language of the act of Parliament.

ALPHEUS T. MASON.

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[28] "The attorney-general," one member declared, "with the expression of a cherub from an old Italian painting, hides behind a seraphic face one of the keenest brains in this country. He knows how to draft a bill, if he wants to draft it, so that the people who read it can understand it. He knows that perfectly well. I suggest that this bill in its drafting is quite deliberate for the purpose of making the trade unions a cote of pigeons for the lawyers to pluck." *Parliamentary Debates* (5th Series), Vol. 205, p. 1679.

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The Irish Free State Elections of September, 1927.[1] The voters of the Saorstat Eireann went to the polls on September 15 to elect a new Dail. This was the fourth election under the P.R. system and the second election of the year. Despite the importance of the issues involved and the strenuous efforts of the two larger parties, the total poll was only 35,000 votes greater than in the previous June. But a total poll of 1,180,000 votes is a good record for the Free State, even though on a percentage basis it does not appear large. The present inefficient state of the register makes a percentage comparison somewhat misleading.

To the student of political institutions the election was interesting because of its bearing on several important matters: proportional representation, the development of the party system, political education, and parliamentary government. Not the least of these was proportional representation. There has been much discussion of P.R. in the Free State, and the Cumann na nGaedheal, or government party, made a promise in the election campaign to modify or abolish the system if returned to office. It remains to be seen whether this pledge can be carried out. But in the meantime it is interesting to point out how the system appears to have operated in the most recent election.

Some of the English newspapers undoubtedly exaggerated the evils of the system, the *Sunday Express* even saying that "one consequence of the election will be the abandonment of an experiment which distorts rather than expresses the opinion of the voters." Such a statement is hardly correct. Proportional representation, with a few minor exceptions to be noted later, appears to have mirrored the mind of the electorate. If the electorate is over-divided, it is not the fault of P.R. that a parliament is returned in which no one party has a majority. Perhaps the parliamentary result is unfortunate, but it can scarcely be said that P.R. did not work as it was intended; for the first preferences cast in the election are quite properly reflected in the personnel of the new Dail. Furthermore, how well the Irish people have been able to work their system can be observed in the tabulations.[2] In watching

[1] Professor Pollock writes from personal observation of the elections. *Man. Ed.*

[2] If we omit Dublin University, in which the candidates were returned unopposed, the average quota for each one of the 149 contested seats was about 8,000. The government party polled 58 quotas and obtained 61 seats; Fianna Fail polled 52 quotas and secured 57 seats; Labor, 13 quotas and 13 seats; Farmers, 8 quotas and 6 seats; National League, 2 quotas and 2 seats; and the Independents, 13 quotas and 12 seats. The vote polled for each party and the seats secured were as follows:

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the counting of the ballot papers, one can see how excellently the voters have succeeded in expressing their preferences. It is a rather complicated system, but this fact does not need to bother the voter when he goes to the polls; and it certainly does not bother the election officials, for they proceed with great expertness and expedition to ascertain the will of the voters.[3]

On the other hand, certain undesirable results of P.R. as it operated in the recent elections are clearly discernible. First and foremost, it is questionable whether it gave the state a government which can govern effectively. In the last two elections it has produced a stalemate, so that the real decision in important matters could, and still can, be made by small groups in the Dail. The tendency of the system to produce many small groups and to prevent one party from securing a majority are the two results which cause the loudest complaints. A realization of what the result of the election would have been without P.R. gives added impetus to those who would abolish the system.[4]

In the next place, it was found that "plumping" was being indulged in to such an extent, as in County Donegal, that the final result really did not correctly reflect the will of the voters. Also in Kilkenny, where President Cosgrave was the candidate,[5] the preferences appear to have been given without much judgment, a number of officials remarking that the Irishman, being naturally a friendly creature, and seeing an opportunity to be kind to both parties, marked his ballot in such

Party	*Votes*	*Seats*
Cumann na nGaedheal	453,064	61
Fianna Fail	411,833	57
Labor	105,271	13
Independents	104,059	12
Farmers	74,723	6
National League	19,000	2
Communist	12,473	1

[3] On the count of the first preference votes in 29 constituencies, the seats secured by each party were: Cumann na nGaedheal, 20; Fianna Fail, 12; Independents, 3; Labor, 1; National League, 1; Farmers, 0.

[4] The government party had the largest vote in 17 out of the 29 contested constituencies; Fianna Fail had the largest vote in 9 constituencies and the Independents in 3 constituencies.

[5] President Cosgrave also stood for Cork City, which seat he also won. Having to make a choice between Kilkenny and Cork, he decided to resign the Kilkenny seat and sit for Cork City. This resignation caused a by-election which was won by Denis J. Gorey, formerly the leader of the Farmers' party but now a member of Cumann na nGaedheal.

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a way as to neutralize his influence and produce a stalemate. Finally, it is obvious that many mediocre members slipped in on the strength of high-class men who happened to be placed on the same list.[6] It is not at all clear that P.R. will produce as good candidates as the single-member constituency plan.

The election has done much to develop the Irish party system. Despite proportional representation, a strong attempt was made to return to the two-party system. There emerged from the election two strong party organizations, amply financed and reasonably well directed. At the same time, the smaller parties practically disappeared, though due to the equality of the two large parties, they hold the balance of power. The election has brought about a realignment of parties, so that now we have Cumann na nGaedheal, the Farmers' party, and the Independents lined up against Fianna Fail (the De Valera party), the Labor party, and the National League—although the latter can scarcely be called a party. It is possible that all of the small groups will disappear by the next election; but it is also possible that a year or two will demonstrate that only by means of coalitions can the Irish parliamentary system be operated.

So far as political activity was concerned, this election eclipsed all others. Never had the Irish people been so continuously bombarded with oral and written propaganda. Incidentally, much of the newspaper advertising was well written and showed the right tendency to appeal to the intellect rather than to the emotions. True enough, there was plenty of balderdash. But it was encouraging to note the absence of violence or disorder, and to learn that there was only an inconsiderable amount of corruption—quite a contrast to Irish elections of yore. It was rather strange to hear Fianna Fail candidates attack the governor-general, calling him "the puppet in Phoenix Park;" for in the other self-governing dominions this official is accepted as is the king in England. But it must be remembered that the parliamentary tradition has not yet become deeply rooted in Ireland, and too much must not be expected of the Free State in so short a time. Needless to say, great strides have been made toward orderly and efficient government, and the student of political institutions has much to learn from Free State administration.

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[6] The central headquarters of the two large parties had much to do with the nomination of candidates, in many cases imposing their choices upon the local constituencies.

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German Public Officers and the Right to Strike. The German national public officer—a term which covers public employees of every rank, from watchmen and gate-keepers to the chancellor, and in every type of occupation, from engineering to diplomacy, from teaching to service on the bench of the highest courts[1]—has a very special status, governed in part by the constitution, in part by the Law of Officers, and in part by many other statutes, such as a law fixing salaries. This status involves many rights and privileges, and on the other hand, many duties and restrictions. The oath of office required of all national officers consists of a pledge to be faithful to the constitution, obedient to the laws, and conscientious in the performance of official duties. The law requires every officer to conduct himself at all times, even in his private capacity, in such a way as to merit the respect due to his office. Misconduct is liable to the "ordinary" penalties of reprimand, warning, and money fine, or, after due hearing, to the "disciplinary" penalties of suspension and dismissal. The criminal code takes cognizance of certain specified crimes and misdemeanors in office, such as the improper bringing about of arrests and prosecutions, and the falsification of official records. Naturally, the officer is also liable when he commits any other type of crime or misdemeanor.

The rights and privileges of public officers are very substantial. National officers are appointed, as a rule, for life; unless any appointment is specified as being revocable, it is *per se* a life appointment, involving protection against arbitrary dismissal or suspension. The office-holder is entitled to a salary, to a retirement allowance if reorganization causes him to be retired temporarily while still of working age, and to a permanent retirement pension after the age of sixty-five. Disability after ten years of service also entitles him to a permanent pension, and he may be granted one even if he has served for a shorter time. He may be given a special allowance in addition to his salary or pension, to equalize the cost of living in his locality with that in other localities; and recently he has had, in addition, a variable allowance to meet the increase of prices. He is granted a certain sum for the support of a wife, and an allowance for each dependent child in his household. Elaborate schemes of public insurance, legal restraints upon the mortgaging or assigning of his official income, and the right

[1] Although in the nature of things persons serving in the army and the navy have a special status, some of the laws affecting "officers" in general are made applicable to them also.

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to sue the Reich for his salary and other perquisites make his financial protection very complete.

He enjoys also a title which is esteemed by the public, and legal protection is accorded against insults to him in his official capacity. He is guaranteed by the constitution the right of free political opinion and free association, and that of special representation through organizations of public officers. He has access to his personal record, in which no fact may be entered which is unfavorable to him until he has been given an opportunity to express himself.

His life status is safeguarded by the constitutional provisions that the duly earned rights of officers are inviolable, and that a means of protest must be provided him against any disciplinary sentence, with the possibility of a rehearing. The Law of Officers provides for such procedure before special tribunals called disciplinary chambers, and in second instance, before a national disciplinary court. The regular courts will take cognizance when the matter is one not merely of discipline, but of crime, such as embezzlement; if they acquit the officer, he is not subject to disciplinary procedure under the same charge. All of the constitutional and legal rights of other citizens, with a few exceptions dependent upon the official status, are enjoyed by the officer.

Nowhere in the national constitution or statutes is there any mention of the right of public officers to strike. The question came before the courts in connection with a railway strike in 1922. An "emergency" ordinance issued by the national president, under the comprehensive powers bestowed on him by Article 48 of the national constitution,[2] forbade employees of the national railways (who have the status of public officers), as well as all other officers, to suspend or to refuse the duties obligatory upon them, and imposed penalties upon all persons who sought to induce a railway strike, or acted to bring one about. The validity of this ordinance was attacked, particularly on the ground that Article 159 of the constitution, which guarantees to all occupations freedom of association for the purpose of preserving and developing conditions of labor and of economic life, is not among the fundamental rights which Article 48 authorizes the president to suspend. The highest national court of ordinary jurisdiction, the Reichsgericht, upheld the

[2] Article 48 gives the president the right to take the necessary measures to restore public safety and order when these are seriously disturbed or endangered—if necessary, with the help of the armed forces. To this end he may suspend certain fundamental rights specified in the article. His emergency measures must, however, be revoked at the demand of the Reichstag.

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ordinance in two important decisions, which read in part as follows:

I. "The formal justification of the national president for the issuing of this ordinance arises from Art. 48, par. 2, R. Verf. 1919, ... He can set aside in whole or in part several fundamental rights. . . . . Art. 159 does not belong to these articles of the constitution. But this does not oppose the validity of the ordinance, since its provisions do not contradict Art. 159, as will be shown.

"The ordinance lays down in Section 1, paragraph 1, the fundamental principle, 'Officers of the national railway, like all other public officers, according to the law of officers now in effect, are forbidden to suspend or refuse the work which it is their duty to perform.' . . . . The law of officers . . . . specifies in Section 2, that the national officers . . . . (except, etc.) . . . . are appointed as for life, and in Section 10, that every national officer is obliged to perform conscientiously the duties entrusted to him, in accordance with the constitution and the laws. . . . . In Section 72 it is said: 'A national officer who violates the obligations laid upon him commits a breach of duty and has incurred a disciplinary penalty.' Herein is expressed a prohibition of suspension or refusal of work. . . . .

"The establishment of the official relationship, like its conclusion, rests upon a sovereign act of the appointing authorities. . . . . But during the continuation of the appointive relationship, Section 10 of the national law of officers forbids any suspension or refusal of work. The special relationship of authority of a public legal kind lays upon the officer a special duty of obedience, fidelity, and service, that is different from the obligations of contractual employees, as is demonstrated in his pledging by oath. . . . . As 'servant of the public as a whole' (Art. 130, RV 1919) he has to place all his energies . . . . at the service of the state for the development and fulfilment of the functions of the state, [and] . . . . to fulfil conscientiously the duties entrusted to him; and he may therefore not refuse to fulfil legal official orders of the higher authorities.

". . . . Art. 159 leaves the question open as to what means may be applied to attain the end [there] safeguarded. The consequence thence arising, that the freedom of association guaranteed in Art. 159 to all occupations and thereby to public officers also, for the purpose of safeguarding and developing conditions of labor and economic life, does not also include the right to strike, is established by the fact that in accordance with the discussions in the committee of the constituent German National Assembly (Aktenstück No. 391, p. 389 ff.), in the session of the

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National Assembly of July 21, 1919 (Bd. 328 S. 1749), the reporter, without meeting any contradiction, declared that through the recognition of freedom of economic and social association the so-called right to strike was not also established according to the constitution. . . . .

"Thus through the national constitution no change has been made in the former legal situation, whereby civil servants did not possess the right to suspend or to refuse the work which it was their duty to perform, on economic or social grounds.

" . . . . The state court established, that the defendant on February 3, 1922, at 7 o'clock in the morning, had to enter upon his duties at the trainyard (Stellwerke) in M., and that he actually at this time did relieve the employee who was at work; but, furthermore, that he not only prevented the use of the lever which would have permitted the exit of the passenger train for C. . . . . but that he also represented himself to the conductor . . . . as a director of traffic, and as such caused him to couple the locomotive to freight cars . . . . but to leave the remainder of the train standing in M. Therefore he did not, as he now claims, simply lay down his work. . . . . That the hindering of the exit of the passenger train . . . . was contrary to the obligations of his work and was therefore an illegal action, the state court has correctly held."[3]

II. "The review held that the ordinance of February 1, 1922, contradicted Art. 159 R. Verf. 1919, in so far as its fundamental principle was the prohibition of suspension of work by the employees of the national railway. Such a conception finds no support . . . . in Art. 159, which seeks to guarantee . . . . freedom of association for the purpose of preserving and developing conditions of labor and economic life, and does not mention suspension of work as a means to attaining this end. It cannot . . . . be recognized that the freedom of association of Art. 159 . . . . includes the right to strike, that is, voluntarily, in violation of existing contractual obligations, for the purpose of achieving certain economic or political ends, generally to lay down work. . . . . But it is evident from the proceedings of the National Assembly that the question of the so-called freedom to strike was not decided in the constitution. For exactly this reason, in Article 159, the designation 'freedom of association' was selected, instead of the expression 'freedom of coalition,' which according to its general interpretation would also have included the right to strike. . . . . The freedom of association guaranteed in Art. 159 therefore does not include constitutional protection for the *means* which are employed to preserve and develop

[3] *Entscheidungen des Reichsgerichts*, St. 56, pp. 412 ff.

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conditions of labor and economic life, especially the suspension of work. . . . .

"According to the law now in effect, the civil servant does not stand in respect to the state in a simple contractual relationship of private law; the appointment as civil servant, on the contrary, establishes a relationship of public-legal authority, with special obligations of fidelity, obedience, and the conscientious fulfilment of the duties imposed. The oath . . . . particularly expresses this. A violation of any duty has not merely private-legal consequences, to be enforced by means of suits at civil law, but rather leads to a direct procedure against the officer in the course of the service; the fulfilment of the official duties can also be compelled by fines. Without such a close union of the officer to the state, which involves on the other side the guarantee of a secure position which may be considered permanent (Art. 128), and of a special protection in the exercise of duty, the state cannot fulfil its functions. It must therefore be able to rely upon the fact that its officers are always at its disposal for the safeguarding of public administration. . . . . The freedom of civil servants to strike would stand in contradiction to their obligations based on their appointment. . . . . They may not act in opposition to the will of the people . . . . as it is expressed through the constitutional organs . . . . by hindering the fulfilment of public functions in refusing to do their duty. Otherwise the public power itself would become entirely dependent upon the associations of civil servants."[4]

In the five years that have passed since these decisions were rendered, no change has been made in the position of the court on the question at issue. The literature of politics and public administration indicates a general agreement with the principle thus established, that the means which may be used by public officers to better their position do not include the right to strike. Since an attempt to strike would not only result in the loss of all rights as a consequence of disciplinary procedure, but would subject the strikers to coercion by means of the national army under the president's emergency power, it is to be anticipated that German public officers will henceforth refrain from the use of the strike, except possibly as an emergency measure or a counsel of despair, and will seek to bring about improvements in their status by securing the passage of appropriate legislation.

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[4] *Entscheidungen des Reichsgerichts*, St. 56, pp. 419 ff.

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Bibliographical Notes on German State Government. At the present time, there is an extensive literature dealing with the structure and functions of the eighteen German state governments.[1] For most of the states, one finds collections of laws and regulations, commentaries and manuals, state hand-books, statistical year-books, legal and administrative journals, together with other more or less fugitive publications. But among all this material, there are almost no comparative studies in state law, politics, and administration.

It may be worth while to suggest briefly a number of helps for the comparative study of German state government. Of the treatises on public law, the only one which deals exclusively with the states is Julius Hatschek's *Ausserpreussisches Landesstaatsrecht* (Berlin, 1926). This volume discusses and compares the governments of all the German states except Prussia and Waldeck.[2] The constitutions of ten of the more important states are printed as appendices, but the usefulness of the book is lessened by the complete omission of an index. Otto Meissner's *Das Staatsrecht des Reichs und seiner Länder* (2nd ed., Berlin, 1923) devotes considerable space to the states and is provided with a good index. It is now, however, somewhat out of date. Walter Jellinek's *Verfassung und Verwaltung des Reichs und der Länder* (Leipzig, 1925) is of little value for the purpose now under consideration, as it contains only thirteen pages on the states. Fritz Stier-Somlo's *Deutsches Reichs- und Landesstaatsrecht* (Vol. I, Berlin, 1924) is, of course, recognized as a standard work, but thus far only one volume has appeared. The second volume, dealing with the states, is not yet forthcoming. In consequence, there is today no single book which covers the entire field of contemporary German state government as is done for the American states in the works of Dodd, Mathews, and Holcombe.

Collections of official materials which include all the states are likewise relatively few in number. For the state constitutions, the one-volume collection edited by Otto Ruthenberg and entitled *Verfassungsgesetze des Deutschen Reichs und der deutschen Länder* (Berlin, 1926) is most useful. This work is both complete and authoritative. It contains the texts of the various constitutions as of February 1, 1926,

[1] Waldeck's recent decision to unite with Prussia will reduce the number of German states to seventeen. This decision takes effect in 1929.

[2] Prussia was omitted because it had already been covered in a previous work by Hatschek, *Deutsches und Preussisches Staatsrecht* (2 vols., Berlin, 1922, 1923).

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and also includes the amendments which have been made since those constitutions were first adopted. Moreover, for each state there is a bibliography of official sources and secondary works; while comparative study is made easy by a serviceable index. Another valuable collection is *Die deutschen Landtagswahlgesetze*, edited by Walter Jellinek (Berlin, 1926). This gives the constitutional and statutory provisions governing the election of the legislatures, not only for the Reich and the German states, but also for Danzig and the Austrian and Swiss federal congresses. There is an excellent brief introduction on the subject of proportional representation, and also a good index. For the American student who wishes to make a study of German electoral methods, this work is indispensable. Professor Jellinek's collection is the first to be published in the series entitled *Staats- und Verwaltungsrechtliche Gesetze der deutschen Länder*. When the other volumes appear, this series will doubtless go far toward supplying convenient and accessible material for the comparative study of the German states.[3]

Of the numerous German legal and political science periodicals, the three of most value for state government are the *Archiv des öffentlichen Rechts*, the *Jahrbuch des öffentlichen Rechts der Gegenwart*, and *Reich und Länder*. The first two of these need no introduction to American students. In this connection, one need only say that both of them often contain valuable articles dealing with the development of governmental institutions in the several German states. The third, *Reich und Länder*, edited by Conrad and Raab, and published at Karlsruhe, is a new quarterly, the first issue of which appeared in May, 1927. It covers the whole field of state government, and also the relations of the Reich and the states. It is a scholarly and non-partisan periodical which aims to serve as a clearing house for the consideration of current state problems. Thus, the leading articles in the May number discussed various questions relating to the state budgets. Another regular feature is the state reports. Governmental developments in the larger states are reported upon twice a year, those in the smaller states once a year. For example, the reports in the August issue deal with legislative, administrative, and financial developments in Bavaria, Hesse, Lübeck, and Waldeck. Finally, mention should be made of the book reviews and extensive bibliographical

[3] There are also a number of legal collections on particular subjects, such as, for example, the collection now in preparation, *Die Polizeiverordnungen des Deutschen Reichs und der deutschen Länder*, edited by Falck, Menzel, and Hirschberg.

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lists of newly published books and reports. In short, *Reich und Länder* may be described as a valuable aid to the comparative study of German state government.[4]

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[4] Other periodicals which may be mentioned as useful for the purpose under discussion are: *Deutsche Juristen-Zeitung*, which reports changes in administration and government day by day, and also publishes important articles from time to time; *Verwaltungsarchiv*, which frequently contains valuable articles on state government and administration; and *Juristische Wochenschrift*, particularly valuable for current happenings in the field of state government and the administration of justice. Attention should be called also to the following treatises: Hue de Grais, *Handbuch der Verfassung und Verwaltung*, 23 Auflage, 1926; Carl Dieckmann, *Verwaltungsrecht*, 1923; Hans Cuno, *Verwaltungsrecht und Verwaltungspraxis*, a set of small volumes devoted to Prussia, and particularly to Prussian finance; and the article by Dr. Erwin Jacobi on *Deutsches Staatsrecht* (*Reichs- und Landesstaatsrecht*) in Vol. 24 of *Enzyklopädie der Rechts und Staatswissenschaft*. (*Ed.*)

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

Professor William B. Munro, of Harvard University, has been appointed by the governors of the University of Toronto to deliver the Marfleet Foundation lectures at that institution during the current year. The Foundation provides for a series of three lectures, to be given triennially, on "some topic relating to the history or government of the United States or Canada."

Dr. Chester Lloyd Jones, recently American commercial attaché at Paris and formerly at Madrid, has been appointed to a professorship at the University of Wisconsin. He will offer courses on Latin American subjects, under the joint auspices of the economics and political science departments. Dr. Lloyd Jones was a professor of political science at the University of Wisconsin from 1910 to 1920, although on leave of absence after the autumn of 1917.

Professors Charles E. Merriam, Harold F. Gosnell, Jerome G. Kerwin, Carroll H. Wooddy, Rodney L. Mott, and Leonard D. White participated in an institute of politics which was held in Chicago in November and December in an attempt to discover a basis for the improvement of conditions of government in that city. The report of the institute was written by Professor Kerwin.

Professor Amos S. Hershey, chairman of the department of political science at Indiana University, is making a four-months' trip through Mexico, Central America, and the West Indies. Professor Hershey has in preparation a volume on American foreign policies.

Dr. Stanley K. Hornbeck, lecturer on Far Eastern history at Harvard University, has been appointed chief of the Far Eastern Division of the State Department in succession to Mr. Nelson T. Johnson, lately become Assistant Secretary of State.

Dr. Frank J. Goodnow has resigned the presidency of Johns Hopkins University, effective July 1, 1929, or earlier. He expects to do certain writing which he has long had in mind, and also to travel. He succeeded President Remsen in 1914, returning for the purpose from China, where he had been serving as constitutional adviser to the new republic.

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Mr. Louis B. Wehle, 50 Broadway, New York City, has begun the preparation of a biography of the late Charles McCarthy and will be glad to receive materials that would be useful, especially such as relate to Dr. McCarthy's work in municipal government.

Mr. John T. Salter, formerly professor of political science at Ursinus College, Pennsylvania, has been appointed assistant professor of government and assistant director of the bureau of municipal research at the University of Oklahoma.

Mr. Wallace E. Robertson, Oklahoma Rhodes scholar, who recently completed three years' study at Oxford, receiving the degrees of B.A. in jurisprudence and B.C.L., has been appointed instructor in government at the University of Oklahoma.

Professor H. Duncan Hall has resigned his position in the School of Citizenship and Public Affairs at Syracuse University to become deputy chief of the social section of the League secretariat at Geneva. Professor Hall began his work at Syracuse last September, after having attended the Institute of Pacific Relations at Honolulu in July.

Professor Edgar J. Fisher, dean of Robert College, Constantinople, and professor of history in that institution, offered courses in international affairs at Syracuse University during the first half of the current academic year. He will lecture at Stanford University during the remainder of the year.

Professor K. C. Leebrick, of the University of Hawaii, has been granted leave of absence until the summer of 1929 and has accepted a temporary appointment on the staff of the School of Citizenship and Public Affairs at Syracuse University. Professor Leebrick began his work at Syracuse in January. He spent November and December in California making arrangements for the Institute of Pacific Relations, of which he is director.

Professor Pitman B. Potter, of the University of Wisconsin, will give courses in the international field during the coming summer session at the University of California at Los Angeles.

Mr. Charles H. Howland, formerly of the League of Nations Repatriation Commission for Greece and Albania, and Mr. Brooks Emeny, former Carnegie Endowment fellow, were recently appointed to teach international relations at Yale University.

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Professor Harold F. Gosnell, of the University of Chicago, is engaged upon a study of the precinct committeemen of Chicago.

Professor Jerome G. Kerwin, of the University of Chicago, has been appointed director of research for the American Municipal Association, and is preparing a report to be presented at the November, 1928, convention of the International Union of Cities.

A bureau of municipal research and information has been organized at the University of Florida, with Professor W. W. Hollingsworth, of the department of history and political science, as director.

Changes in the department of government at Louisiana State University, of which Colonel A. T. Prescott, dean of the college of arts and science, is head, include the promotion of Associate Professor Charles W. Pipkin to the professorship of comparative government and the transfer of Mrs. Harriet M. Daggett to the Law School as assistant professor of law. Mr. Taylor Cole, formerly of the University of Texas, is instructor in government, and Messrs. R. L. Carleton and J. M.Coussons are teaching fellows.

The department of government at the University of Oklahoma has had a rapid growth in the past decade. Whereas prior to 1916 only one man was teaching the subject, in the current academic year the staff consists of two professors, one associate professor, four assistant professors, two instructors, and three graduate assistants. In 1926–27 there were twenty-three hundred and fifty-four enrollments in government courses.

The trustees of George Washington University, Washington, D. C., have announced a gift of $1,000,000 to the University by the Supreme Council of the Scottish Rite Masons to establish a School of Government. The money is to be available immediately, and the new school will be in operation in the autumn of the present year.

The Cincinnati Bureau of Municipal Research has undertaken to outline a program for the revision of the financial procedure of the city administration, including budget, special assessments, and accounting. Messrs. William Watson, Philip Cornick, and A. E. Buck, of the National Institute of Public Administration, have been retained by the bureau to assist in this work.

Mr. Bruce Smith, of the National Institute of Public Administration, is making a study of rural justice in Illinois for the Illinois Association

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for Criminal Justice. The institute has recently completed a study of public utility taxation in Virginia. Mr. Clarence Heer was in charge of the work. The study of county government in Virginia made by the Institute at the request of Governor Byrd is shortly to be published. Copies may be obtained from Mr. J. H. Bradford, director of the budget, Richmond, Virginia.

Mr. Clarence E. Ridley has recently been added to the staff of the National Institute of Public Administration to fill the position of engineer made vacant by the resignation of Mr. William A. Bassett, who is now professor of municipal and industrial engineering at the Massachusetts Institute of Technology. Mr. Ridley is a graduate of the National Institute, and was city manager of Bluefield, West Virginia, for four years, and at one time vice-president of the City Managers Association. His doctoral dissertation at Syracuse University, "Measuring Municipal Government," has recently been published.

The fifth Institute under the Norman Wait Harris Memorial Foundation will be held at the University of Chicago, June 18–30. The Institute will be devoted to foreign investments, which will be studied from both the economic and the political point of view. As usual, there will be both public lectures and round tables. At least three eminent authorities from Europe on public finance, international trade, and foreign investments will be present. It is expected also that a number of prominent American authorities on the general subject will take part. Further information may be obtained from the executive secretary, Professor Quincy Wright, of the University of Chicago.

The eighth session of the Institute of Politics will be held at Williamstown, Massachusetts, August 2–30. Round tables and leaders have thus far been arranged for as follows: (1) The Problems of the Pacific, Professor George H. Blakeslee, Clark University; (2) Protection of Citizens Abroad, Professor E. M. Borchard, Yale University; (3) The Agricultural Surplus, Professor C. R. Fay, University of Toronto; (4) Latin America and Mexico, Dr. Leo S. Rowe, Pan-American Union; and (5) Social Readjustment through Voluntary Control, Mr. Graham Wallas, London School of Economics and Political Science. In addition to the round tables, general conferences will be arranged, including one on problems of Africa, to be conducted by Dr. Raymond L. Buell, of the Foreign Policy Association, New York City.

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Announcement has been made of the incorporation of the Brookings Institution, in Washington, D. C., which will absorb the Institute for Government Research, the Institute of Economics, and the Robert Brookings Graduate School of Economics and Government. The two research institutes will continue to function as divisions of the new Institution. The Robert Brookings Graduate School will cease to exist. It is stated that a training function will be carried on in connection with the research work of the Institution, but it will not be the policy to grant degrees, except perhaps in unusual cases. It is planned to develop a center for visiting scholars to serve as a clearing house for information and to make the facilities of Washington more readily available.

Professor Cephas Daniel Allin, of the University of Minnesota, died after a short illness on October 23. He was born at Clinton, Ontario, August 12, 1874, and received his education in the Ontario public schools, the University of Toronto (A.B., 1897; LL.B., 1899), Harvard University (A.M., 1900), the University of Berlin (1903), and Oriel College, Oxford (1904). His teaching career, begun at Stanford (1902–03), was continued at Queen's University, Canada (1906–07), and closed with twenty almost unbroken years of splendid achievement at Minnesota (1907–1927). He saw summer school service also at such universities as Stanford, Colorado, Michigan, and Chicago. Always an indefatigable worker, he turned out an almost continuous series of monographs and articles on problems of the Australian co nmonwealth, on the Canadian constitution and Canadian relations with the United States, on the British dominions and the empire, and on special problems in international law. As chairman of his department since 1920, he devoted an infinite amount of pains to provisions for the welfare of his colleagues and to the selection of new men to fill the recurrent vacancies in a steadily increasing staff. Despite these incessant labors in scholarly and administrative capacities, however, he never lost his interest in students or his zest for teaching. His entrance to the classroom was unfailingly cheerful, and he never left it without having aroused his students' interest, clarified their thought, and created in them a sense of personal liking and respect for their instructor. He lived for his students, his friends, his family, his university, and the high cause of scholarship. It was his nature to give always without stint of himself and of his time. His own work ever seemed secondary while he gave patient ear and thought to the problems of a friend, a student, or even a casual acquaintance. None but those most intimately associated with him can

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ever know how completely, cheerfully, and courteously he sacrificed himself for the welfare of others. W.A.

The annual report of the American Council of Learned Societies for 1927 contains the following items (among others) of interest to political scientists: (1) the Dictionary of American Biography, under the editorship of Dr. Allen Johnson, is progressing satisfactorily, and the first volume will be published in 1929; (2) the report of the survey of humanistic and social research, conducted by Professor Frederic A. Ogg, is to be published by the Century Company in February of the present year; (3) a list of the serial publications of foreign governments is being compiled under the joint auspices of the Council, the American Library Association, and the National Research Council and is expected to be ready by 1930; (4) the survey of learned societies, conducted by Dr. Waldo G. Leland, permanent secretary of the Council, will probably be completed during the current year; (5) a committee on linguistic and national stocks in the United States, Professor Walter F. Willcox, chairman, has begun preliminary studies of the population of the United States in 1790; and (6) the committee on grants in aid of research, Dean Guy Stanton Ford, chairman, will administer a fund of the same proportions ($5,000) as in former years. The Council has established executive offices at 907 Fifteenth St., Washington, D. C.

At the December meetings of the learned societies in the field of the social sciences it was announced that, in pursuance of a plan prepared by a committee of the Social Science Research Council, the Laura Spelman Rockefeller Memorial Foundation has pledged a subvention of half a million dollars for the establishment and maintenance of a journal devoted to the presentation of abstracts of books and articles, American and foreign, in the fields of history, economics, political science, sociology, anthropology, and human geography. A project long under consideration is thus happily brought to the point of realization, under conditions which, in the judgment of the committee, will be entirely adequate to the purpose. A committee of organization has been appointed by the Social Science Research Council, as follows: Professor F. Stuart Chapin, University of Minnesota, chairman, representing sociology; Professor Carlton J. H. Hayes, of Columbia University, representing history; Professor Davis R. Dewey, of the Massachusetts Institute of Technology, representing economics; Professor Frederic A. Ogg, of the University of Wisconsin, representing political science; Dr. Clark Wissler, of the American Museum of Natural History,

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representing anthropology; and Dr. Isaiah Bowman, of the American Geographic Society, representing geography. This board is to be assisted by a larger advisory council representing the various fields. The representatives of political science in this connection are Professors William Anderson, of the University of Minnesota, Charles G. Fenwick, of Bryn Mawr College, and Walter J. Shepard of the Brookings Grad, uate School.

At the thirty-third annual meeting of the National Municipal League, held at New York on November 10–11, in conjunction with the Governmental Research Conference and the National Association of Civic Secretaries, round tables were organized on budget procedure, special assessments, state supervision of local finances, executive allotments as a means of budget control, the "slacker vote," public opinion, misconceptions concerning crime, improving college courses in municipal government, and university training for public service. Round-table chairmen included Professors M. B. Lambie, Clyde L. King, and Thomas H. Reed, and Messrs. Lent D. Upson and C. A. Dykstra. Papers were given by (among others) Professors Raymond Moley, William B. Munro, Samuel C. May, A. C. Hanford, and H. A. Overstreet, and Messrs. C. E. Rightor, Philip Zoercher, and Bruce Smith. Hon. Frank L. Polk retired as president of the League and Mr. Richard S. Childs was elected to the office.

The sixteenth annual meeting of the Governmental Research Conference was held at the Bar Association Building, New York City, November 9–11. Seventy-two persons, representing thirty-seven research organizations of the United States and Canada, were registered. On November 9 the conference met alone, and after an address of welcome by Dr. Luther Gulick, chairman, the forenoon session was devoted to a discussion of current work and publicity methods of the research bureaus. A luncheon at the New York City Club was featured by an address by Mr. Robert Fulton Cutting, chairman of the board of trustees of the New York Bureau of Municipal Research and the National Institute of Public Administration. Dr. Gulick presented a statement of the accomplishments and discouragements in municipal government during the past year, and the progress made in the organization of new research agencies. The afternoon session was marked by an address on "Fallacies and Foibles of the Research Movement," by Mr. Francis G. Oakey, of Searle, Oakey, and Miller, New York. This address was followed by a general discussion. On November 10–11 the

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conference joined with the National Municipal League in round-table sessions. A complete report of the convention was published early in January in the annual *Proceedings* of the Conference, copies of which may be obtained from Mr. Russell Forbes, secretary of the Conference, 261 Broadway, New York. The executive committee for 1928 is composed of Messrs. William C. Beyer, Luther Gulick, Lent D. Upson, Walter Matscheck, Stephen B. Story, and Russell Forbes. Dr. Gulick is chairman and Mr. Beyer vice-chairman.

A gift of $50,000 has been received by the Detroit Bureau of Governmental Research from an anonymous donor to finance a project of the International Association of Chiefs of Police for developing a uniform classification of crimes and uniform reporting of offenses throughout the country. Police Commissioner William P. Rutledge, of Detroit, is chairman of the committee on the standardization of police crime records which will have charge of the new work. Other members of the committee include Chief Joseph A. Gerk of St. Louis, Chief Jacob Grauel of Cleveland, Chief James Higgins of Buffalo, Chief L. V. Jenkins of Portland, Oregon, Chief Thomas Healy of New Orleans, Supt. Michael Hughes of Chicago, and Chief August Vollmer of Berkeley, Cal. It is expected that the study will furnish not only a means of measuring the effectiveness of police activity, but, more particularly, a basis of diagnosing and attacking at the source the social causes of crime, and will constitute a first step in crime prevention. An advisory committee is to be appointed to coöperate with the police chiefs' committee, so that the crime statistical collection work of the latter will be correlated with work now being undertaken or proposed with regard to judicial and penal statistics. Dr. Lent D. Upson will be chairman of this committee, which will include representatives of the Census Bureau, the Department of Justice, and the American Institute of Criminal Law and Criminology, besides several widely known penologists. Mr. Bruce Smith, of the National Institute of Public Administration, who has had more than ten years of practical experience with police problems, and who has written extensively on the subject, has been named general director of the work.

The 1928 session of the Geneva School of International Studies will open on July 10 and continue to the close of the meeting of the League Assembly. The School is planned to meet the needs of four distinct groups of students: (1) Professor Alfred Zimmern will hold daily a two-

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hour seminar with a group of advanced students. The number admitted will be limited to twenty. Each applicant will be required to submit to Professor Zimmern an essay on American foreign policy. (2) There will be a "coördination" course, open to students of third-year standing and over at European universities, and to graduate students at non-European universities. This will include lectures in English and French on (a) the culture and institutions (including the educational system) of individual countries, (b) the foreign policy of individual countries, and (c) general international problems. Each lecture will be followed by discussion. Regular attendance will be required. (3) There will be a "contact" course, open to all university students and to other persons interested in international relations, covering the same ground in a simpler manner, also including discussion. (4) In addition, special courses will be arranged for teachers, dealing with the international aspect of educational problems. During the session of the Assembly there will be a daily commentary by Professor Zimmern and an evening meeting consisting of a lecture by an Assembly delegate, followed by discussion. Inquiries should be addressed to Professor Zimmern at 23 bis Rue Balzac, Paris, France, or to the Geneva School of International Studies, 366 Madison Avenue, New York City.

Annual Meeting of the American Political Science Association. The twenty-third annual meeting of the Association was held at the Mayflower Hotel, Washington, D. C., December 28–30, 1927. The registration was 292, as compared with 157 at the St. Louis meeting of 1927. In session at the same time and place were the American Economic Association, the American Statistical Association, the American Association for Labor Legislation, the American Farm Economic Association, the American Association of Collegiate Schools of Business, the American Association of University Instructors in Accounting, the National Association of Teachers of Marketing and Advertising, the American Sociological Society, the National Community Center Association, the National Association for the Study of Educational Sociology, the American Historical Association, the Mississippi Valley Historical Association, the American Catholic Historical Association, the Agricultural History Society, and the Bibliographical Society of America.

The program followed the general form of the past three years. As arranged by the program committee, under the chairmanship of Professor Walter J. Shepard, it was as follows:

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WEDNESDAY, DECEMBER 28

10:00 A. M. Round Table Meetings.

1. *The Legislative Process as Illustrated by the McNary-Haugen Farm Relief Bill.*
   Director, Frederic P. Lee, Legislative Counsel, U. S. Senate.
   Sub-topic: *The Sources of Legislative Policies.*
   Charles J. Brand, National Fertilizer Association; George N. Peek, Executive Committee of Twenty-two of the North Central States Agricultural Conference.
2. *The Diplomatic Process.*
   Director, Jesse S. Reeves, University of Michigan.
   Sub-topic: *The Work of the State Department and the Foreign Service.*
   Hon. Wilbur J. Carr, Assistant Secretary of State; Rear-Admiral William L. Rodgers, Washington, D. C.
3. *Federal Relations.*
   Director, Arthur W. Macmahon, Columbia University.
   Sub-topic: *State Participation in the Administration of National Laws.*
   John E. Benton, National Association of Railroad and Utilities Commissioners; J. J. Britt, Bureau of Prohibition; Ass't Surgeon General W. F. Draper, U. S. Public Health Service; W. S. Frisbie, U. S. Department of Agriculture; W. C. Henderson, U. S. Biological Survey; and Lloyd S. Tenny, U. S. Department of Agriculture.
4. *Problems of Public Administration.*
   Director, W. F. Willoughby, Institute for Government Research.
   Sub-topic: *Problems of Personnel Administration.*
   George Russell Wales, U. S. Civil Service Commission.
5. *The Government and the Press.*
   Director, Robert D. Leigh, Williams College.
   Sub-topics: *Methods of Reporting Washington News: Criticism of the Newspapers for Reporting Governmental Affairs; The Conspiracy Theory.*

12:30 P. M. Subscription Luncheon

Chairman, William Bennett Munro, Harvard University, President of the American Political Science Association.
Address: *The Reporting of Political News.* David Lawrence, *The United States Daily.*

2:15 P. M. Session on Revolution and Democracy in Central Europe.

Chairman, Francis W. Coker, Ohio State University.
The Crisis of Social Democracy in Central Europe.
Oscar Jászi, Oberlin College.
The German Presidency in Theory and Practice.
Elmer D. Graper, University of Pittsburgh.
Revolutionary Changes in European Local Government.
Josef Redlich, Law School of Harvard University.
Discussion: Carl J. Friedrich, Harvard University.

3:00 P. M. Meeting of Executive Council and Board of Editors.

8:15 P. M. Joint Session with American Historical Association for Presidential Addresses.

Presiding officer, Hon. Hiram Bingham, U. S. Senator from Connecticut.

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Award of Prizes of American Historical Association.
Annual Address of the President of the American Historical Association: *A Layman's View of History.*
Henry Osborn Taylor.
Annual Address of the President of the American Political Science Association: *Physics and Politics: An Old Analogy Revised.*
William Bennett Munro.

THURSDAY, DECEMBER 29

10:00 A. M. **Round Table Meetings**

1. *The Legislative Process.*
Director, Frederic P. Lee.
Sub-topic: *The Framing of Legislation.*
Ellsworth C. Alvord, Special Legislative Assistant to the Secretary of the Treasury.
2. *The Diplomatic Process.*
Director, Jesse S. Reeves, University of Michigan.
Sub-topic: *Open and Secret Diplomacy.*
Henry Kittredge Norton, Irvington, N. Y.; Roland S. Morris, Philadelphia.
3. *Federal Relations.*
Director, Arthur W. Macmahon, Columbia University.
Sub-topic: *Subsidies: the Actual Operation of Federal Aid.*
A. F. MacDonald, University of Pennsylvania; Grace Abbott, Children's Bureau; Thomas H. MacDonald, Bureau of Public Roads; J. G. Peters, United States Forest Service; M. C. Wilson, Agricultural Extension Service; J. C. Wright, Federal Board for Vocational Education.
4. *Problems of Public Administration.*
Director, W. F. Willoughby, Institute for Government Research.
Sub-topic: *Administrative Reorganization: National Government.*
L. W. Wallace, American Engineering Council.
5. *The Government and the Press.*
Director, Robert D. Leigh, Williams College.
Sub-topic: *The Yokel Theory.*

12:30 P. M. **Subscription Luncheon.**
Training for Citizenship.
Chairman, Robert C. Brooks, Swarthmore College.
The By-Products of Political Science.
James T. Young, University of Pennsylvania.
Civic Education in Great Britain.
John M. Gaus, University of Wisconsin.
Discussion: Charles E. Martin, University of Washington.

2:15 P. M. **General Session.**
Federal Administration and Judicial Control.
Chairman, Isidor Loeb, Washington University.
The Place of the Independent Commission in the Federal Government.
Joseph B. Eastman, Interstate Commerce Commission.

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Judicial Control of Official Discretion in Anglo-American Law.
John Dickinson, Princeton University.
Discussion: S. C. May, University of California.

4:15 P. M. **Annual Business Meeting of the Association.**
Presiding Officer: William B. Munro, Harvard University.
Annual Reports of the Secretary-Treasurer and of the Managing Editor of the *American Political Science Review.* Reports of committees and election of officers for 1928.

7:00 P. M. **Annual Dinner, jointly with the American Historical Association, Mississippi Valley Historical Association, American Catholic Historical Association, and Agricultural History Society.**
Presiding Officer: Herbert Putnam, Librarian of Congress.
Speakers: Vincent Massey, Canadian Minister to the United States; Herbert Hoover, Secretary of Commerce; Albert C. Ritchie, Governor of Maryland; Frederick P. Keppel, President of the Carnegie Corporation of New York.

FRIDAY, DECEMBER 30

10:00 A. M. **Round Table Meetings.**

1. *The Legislative Process.*
   Director, Frederic P. Lee.
   Sub-topic: *The Parliamentary Consideration of Legislation.*
   L. J. Dickinson, Member of Congress from Iowa, and Chester C. Davis, Consultant Agricultural Economist.
2. *The Diplomatic Process.*
   Director, Jesse S. Reeves.
   Sub-topic: *The Procedure of International Conferences.*
   W. W. Willoughby, Johns Hopkins University; James Brown Scott, Washington, D. C.
3. *Federal Relations.*
   Director, Arthur W. Macmahon.
   Sub-topic: *Agreements, Contracts, and Compacts between Nation and States and among States.*
   Elwood Mead, U. S. Commissioner of Reclamation; O. C. Merrill, Federal Power Commission; H. Goding, United States Bureau of Animal Industry.
4. *Problems of Public Administration.*
   Director, W. F. Willoughby.
   Sub-topic: *Administrative Reorganization: State Government.*
   W. H. Edwards, University of North Dakota.
5. *The Government and the Press.*
   Director, Robert D. Leigh.
   Sub-topic: *The Complexity Theory.*

12:30 P. M. **Luncheon Session.**
Chairman, William B. Munro, Harvard University.
Address: *The Political Consequences of the Mexican Revolution.*
Frank Tannenbaum, Institute of Economics.
Discussion: Graham H. Stuart, Stanford University.

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2:15 P. M. **General Session.**

Some Major Problems of Political Research.
Chairman, Benjamin F. Shambaugh, Iowa State University.
A Survey of State and Local Governments in Virginia.
A. E. Buck, National Institute of Public Administration.
The Investigation of the Indian Bureau and Indian Administration.
Lewis Meriam, Institute for Government Research.
A Scientific Study of the Administration of Justice.
Raymond Moley, Columbia University.

The Executive Council and Board of Editors received the report of the Secretary-Treasurer on the membership and finances of the Association. The report may be summarized as follows:

A. REPORT ON MEMBERSHIP, DECEMBER 15, 1926, TO DECEMBER 15, 1927
(WITH COMPARATIVE STATISTICS)

I. *Total Membership*

December 15	Annual Members	Life Members	Total
1916	1499	48	1547
1917	1464	54	1518
1918	1278	54	1332
1919	1257	53	1325
1920	1256	53	1309
1921	1304	57	1361
1922	1391	59	1450
1923	1416	55	1471
1924	1469	52	1521
1925	1511	52	1563
1926	1532	54	1586
1927	1614	52	1666

II. *Accessions and Cancellations*

	Accessions	Cancellations	Net Loss	Net Gain
1916	195	110		85
1917	125	154	29	
1918	65	138	73	
1919	68	143	75	
1920	96	118	22	
1921	173	132		41
1922	198	111		87
1923	163	138		25
1924	180	130		50
1925	166	124		42
1926	124	103		21
1927	150	70 (68 annual, 2 life)		80

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B. Report on Finances for the Fiscal Year December 15, 1926, to December 15, 1927.

Balance Sheet—December 15, 1927.

Resources

Cash in Bank—Per Bank Statement	$1,593.95	
Less Checks Outstanding	186.48	
Cash on Hand—Bank	$1,407.47	
Petty Cash	1.49	$1,408.96
Savings Account		771.15
Investments		1,200.00
Accounts Receivable		1,280.00
Total		$4,660.11

Liabilities and Surplus

Dues and Contributions Advanced	$ 891.50
Surplus of Association	3,768.61
	$4,660.11

Operating Account

Statement of Receipts and Disbursements

Balance on Hand—December 15, 1926		$2,155.27
Receipts in 1927:		
Dues for 1927 and Prior Years	$5,031.20	
Special Contributions—1927	748.50	
Dues and Special Contributions Advanced	891.50	
Sale of Publications	494.11	
Advertising	387.30	
Sale of Index	92.00	
Total Receipts		7,644.61
Total Cash Available		$9,799.88
Less Checks Returned by Bank		38.25
		$9,761.63
Payments in 1927:		
Review—Printing	$4,282.15	
Review—Reprints, Postage, etc.	396.63	
Managing Editor's Expenses	507.80	
Managing Editor—Travel	57.50	
Honorariums	237.00	
Secretary and Treasurer—Cler. & Stenog.	580.70	
Secretary and Treasurer—Stat., Print., & Postage	373.32	
Secretary and Treasurer—Travel	35.90	
Secretary and Treasurer—Miscellaneous Expenses	104.66	
Dues—American Council of Learned Societies	78.15	

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*Miscellaneous Expenses	760.61	
Index Cost	932.24	
Equipment	7.50	
	$8,354.16	
Less Petty Cash	1.49	
Total Payments		8,352.67
Balance on Hand—December 15, 1927		$1,408.96
Consisting of:		
Bank Balance	$1,407.47	
Petty Cash	1.49	
	$1,408.96	

*Includes special expenses this year:

Contributions to the Encyclopaedia of the Social Sciences	$500.00
Mailing circulars, Encyclopaedia of the Social Sciences	54.90
Expense, Policy Committee	125.79
Total	$680.69

Estimates presented for the fiscal year 1928 showed a total balance and receipts of $9,308.96, disbursements aggregating $8,082.72, and a balance December 15, 1927, of $1,226.24. This estimate did not take into account any increases of expenditure which might be authorized by the Executive Council.

The Treasurer's accounts were referred to an auditing committee consisting of Professors Isidor Loeb and S. Gale Lowrie, which reported that the books and records of the Association had been audited by Payton and Ross, public accountants, and which certified that the statements submitted by the Secretary-Treasurer had been accurately drawn from the records.

The most significant business to come before the Association was the report of the Committee on Association Policy, which was presented by Professor Thomas H. Reed, chairman. Professor Reed reported that the Carnegie Corporation had made an appropriation of $7,500 to enable the committee to conduct a program of self-study to ascertain what the American Political Science Association might do to further and improve the work of political science in its various phases. Professor Reed stated that the work of investigation had been divided among the various members of the committee and requested that the committee

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be continued in office for another year. The Association accepted Professor Reed's report and voted that the committee should continue with the following members: Professors C. A. Beard, W. B. Munro, F. A. Ogg, C. E. Merriam, W. F. Willoughby, J. A. Fairlie, E. W. Crecraft, R. M. Story, and T. H. Reed, chairman. It was understood that the President and Secretary-Treasurer would work with the committee ex-officio.

Professor Frederic A. Ogg, managing editor of the *American Political Science Review*, reported that the Board of Editors had remained unchanged throughout the year, except for the heavy loss suffered by the death of Professor Victor J. West in February. Professor West was succeeded on the Board by Professor Clyde L. King. Professor Lindsay Rogers resigned at the end of the year, and Professor Arthur W. Macmahon was elected as his successor. No further changes were made in the membership of the Board for 1928, and the body therefore consists of Professors C. A. Berdahl, Robert E. Cushman, John A. Fairlie, A. C. Hanford, Clyde L. King, Arthur W. Macmahon, Thomas H. Reed, Walter J. Shepard, Bruce Williams, and W. W. Willoughby, with Professor Frederic A. Ogg as managing editor.

Announcement was made that under a grant of $500,000 from the Laura Spelman Rockefeller Foundation the Social Science Research Council will undertake the publication of a *Journal of Social Science Abstracts*, which will correspond, in the field of the social sciences, to sundry journals of abstracts in the fields of the natural sciences. Announcement was made also that Professor Frederic A. Ogg had been appointed by the Social Science Research Council to represent the interests of political science on the board of organization and management; and, on nomination of Professor Ogg, Professors William Anderson, Charles G. Fenwick, and Walter J. Shepard were designated by the Association as members of a larger advisory committee which is to be formed.

Professor John A. Fairlie, the representative of the Association on the board of directors of the *Encyclopaedia of the Social Sciences*, reported that funds had been raised in sufficient amount to make certain the publication of the Encyclopaedia. A board of directors has been chosen, Professor E. R. A. Seligman has been appointed editor-in-chief; and Dr. Alvin Johnson has been made assistant editor.

At the luncheon session of December 28, brief memorial statements regarding the late Professor Victor J. West and the late Professor Cephas D. Allin were made, respectively, by Professors Graham H. Stuart and William Anderson.

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Officers of the Association were elected for 1928 as follows: president, Professor Jesse S. Reeves, University of Michigan; first vice-president, Professor A. N. Holcombe, Harvard University; second vice-president, Professor F. W. Coker, Ohio State University; third vice-president, Professor C. G. Haines, University of California at Los Angeles; secretary-treasurer, Professor J. R. Hayden, University of Michigan. The newly elected members of the Executive Council for the term expiring December, 1930, are Professors R. E. Cushman, Cornell University; W. Y. Elliott, Harvard University; Ellen D. Ellis, Mt. Holyoke College; A. R. Hatton, Northwestern University; and C. W. Pipkin, Louisiana State University.

Announcement was made that the American Historical Association had voted to hold its annual meeting for 1928 in Indianapolis, and although no action as to the place of meeting of the American Political Science Association was taken by the Executive Council, it was thought probable that the Association would meet in Indianapolis in 1928.

J. R. HAYDEN, *Secretary.*

International Aspects of Political Science. The student of international law and diplomacy is always abundantly provided with international meetings of many sorts, ranging from the sessions of the League of Nations and the World Court to relatively important unofficial congresses. The events of the summer of 1927 seem to indicate that not only must the international lawyer construct his budget to allow for periodic expeditions to Europe, but also the political scientist interested in public law, public administration, and municipal government. A notable series of summer congresses included the Third International Congress of the Administrative Sciences (*Congrès International des Sciences Administratives*), the first session of the International Institute of Public Law (*Institut International de Droit Public*), the annual Institute of Public Administration, conducted by the (British) Society of Civil Servants, the Third International Congress on Scientific Management, the second biennial convention of the International Federation of Civil Servants and Teachers, and an important meeting of the executive committee of the *International Union of Cities and Local Authorities.* Each of these meetings is referred to briefly in the following paragraphs.

In point of time comes first the International Congress of the Administrative Sciences, whose second convention (in 1923) was reported upon in the *Review* (Vol. XVIII, p. 384). The recent congress was held

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in Paris June 21–24, under the direction of a committee guided by the distinguished dean of the faculty of law of the University of Paris, M. Henri Berthélemy. Delegations from substantially every European state, from Japan and China, from several Central and South American countries, and from the United States joined in the discussion of administrative problems. Among the delegates may be noted, from France, Professor Berthélemy, the venerable Professor Duguit, Professor Jèze, Professor Rolland, M. André Lefas, the son of the well-known author of *L'État et les Fonctionnaires* and himself a member of the Council of State, and M. Henri Fayol, son of the late Henri Fayol, whose presence dominated the preceding congress at Brussels. From Belgium came a numerous delegation, including M. de Vuyst, secretary-general of the Congress, and M. Heyvaert; from Spain, Count Torre Velez, the president of the Congress, and Professor Gascon y Marin, of the University of Madrid; from Rumania, Professor Negulesco, director of the Rumanian Institute of Public Law and editor of the *Revista de Drept Public*; from Switzerland, Professor Roger Calame, of the University of Basle; from England, Mr. G. Montagu Harris, director of foreign intelligence in the ministry of health. The delegation from the United States included Dr. Luther Gulick, Dr. Harold W. Dodds, Mr. I. C. Brower, city manager of Lima, Ohio, Mr. Royden J. Dangerfield, and Professors John A. Fairlie, Walter R. Sharp, Lindsay Rogers, and Leonard D. White. The total attendance was approximately two hundred.

The work of the Congress was carried on in five round tables, devoted respectively to local government, intermediate administrative areas, national administration, bibliography, and personnel management. A prepared agenda was at hand to guide each round table, and at the close of the discussions each prepared a series of resolutions which were approved at a final plenary session.

Space will not permit elaboration of these resolutions, but they may be summarized to indicate the type of problems which engaged the attention of the congress. The round table on local government encouraged the formation of municipal associations and conferences and demanded the greatest possible degree of home rule, economic, administrative, and political. On the difficult question of division of tax resources between state and city, it urged the advisability of abundant local revenues, but admitted the principle of state subventions, and insisted on celerity in those cases in which local budgets are subject to central approval. It advised elected municipal officials to recognize

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the initiative and experience of the technical staffs, and it recommended an international agency to deal with vital statistics.

The second round table advocated woman's suffrage for local assemblies, associations of cities and departments or provinces, the extension to other countries of legislation similar to the French laws on tourists, and the protection of natural sites, especially against the billboard nuisance. The third round table recommended the advisability of an administrative body similar to the French council of state, advocated the general adoption of the Rumanian law authorizing the courts to require administrative officials to submit papers, and favored an autonomous organization along the lines of private corporations for publicly-owned utilities. This round table proposed three questions for consideration in 1930: (1) the collaboration of the Council of State with the legislative body in the preparation of legislation, (2) the desirability of organizing an autonomous administrative jurisdiction, as in France or Italy; (3) the means of executing judicial decisions against the state.

The fourth round table, dealing with bibliography, urged close collaboration with the League of Nations Committee on Intellectual Coöperation, and recommended study of the legal status of international associations not for profit. The fifth round table, which was the theater of lively differences of opinion on the rights of civil servants, voted a series of propositions with regard to the status of the *fonctionnaire*. These statements stressed the necessity of sound general, as well as professional, training; the authority of the bureau chiefs and department heads; prohibition of strikes; the existence of a science of administration, among whose laws is that of unity of command, which should eliminate the interference both of parliamentarians and trade unions; the importance of scientific management, and the extension of the use of office machines; and, finally, the mutual interest of the public and officialdom in improving the public service. This committee also proposed questions to be studied for the next congress: the general and professional training of public officials, the authority and responsibility of department heads, the "natural laws" of administrative science, and the improvement of administrative methods.

This congress marks the definite reëstablishment of an institution first organized in 1911, whose existence was interrupted by the World War, but which now has brought together delegations from all nations. It was a particularly impressive moment when the Austrian delegate paid homage to the intellectual leadership of France in an eloquent

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speech delivered in perfect French. The Congress is of interest also because it brings out the remarkable uniformity of the pattern of administrative problems the world over. Although it will become more significant as greater attention is paid to the preliminary work of organization, it is today of real significance as a *foyer* at which meet students and practitioners of administration the world over. The Congress has printed a *Rapport Général* and a statement of the *Voeux*, both of which may be obtained from M. Lesoir, *Directeur au Ministère de l'Interieur*, Brussels. The next meeting of the Congress will be held in 1930 at Madrid.

Immediately at the close of this congress was held the first meeting of the *Institut International de Droit Public*. The purpose of this organization is "scientific work in the field of public law and political science, the theoretical examination of different problems of public law, the elaboration of methods, the declaration of general principles, the comparison and evaluation of different national doctrines, in view of the development of individual liberty by means of legal principles in free countries." A distinguished group of students of public law gathered at the faculty of law of the University of Paris, June 26, to applaud the opening address of the president, Professor Gaston Jèze, including Professors Berthélemy, Duez, Duguit, Fairlie, Gascon y Marin, Gronski, Laferrière, Mestre, Mirkine-Guetzévitch, Negulesco, Baron Nolde, Politis, Rolland, and White.

The session was devoted chiefly to the selection of subjects on which reports will be presented at the next meeting of the Institute, in June, 1928, at Paris. These subjects include: (1) the theoretical and practical value of the principle of separation of powers and its application in the public law of modern states (M. Redlich); (2) the crisis of representative governments and of parliaments in modern democracies (Lowell); (3) the scope of rules of constitutional law for the negotiation and ratification of treaties (Politis and Schücking); (4) the legal sanction of constitutional principles (Kelsen); (5) the rule of law and objective law (Duguit); (6) the legal significance of public liberties (Jèze). Associated with each of these subjects is a committee, the members of which collaborate in the preparation of the report. Students of public law will await the first series of reports with much anticipation. Communications concerning the Institute may be addressed to Professor Gaston Jèze, Faculty of Law, University of Paris.

The Institute of Public Administration, founded by a group of English civil servants, holds an annual summer conference, alternating between

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Oxford and Cambridge. The 1927 conference was held at Trinity College, Cambridge, with Sir John Anderson, G.C.B., permanent undersecretary of the Home Office in the chair. These conferences are perhaps at the present moment the most significant of their kind. The membership of the conference is drawn almost wholly from the civil service and the higher branches of the municipal service, over a hundred persons gathering this year for the four-days' session. The Institute welcomed at the 1927 conference an imposing delegation headed by Kammerherr Clan from the Danish civil service, which returned an official visit by the Institute to Denmark in 1926. In addition, Dr. H. W. Dodds, Dr. Luther Gulick, and Professors Fairlie and White were in attendance.

The conference technique of the Institute is full of interest. The program is worked out well in advance, and formal papers are not only submitted and printed, but are distributed and taken as read when the conference assembles. This eliminates the necessity of reading the papers and permits immediate discussion. Any person desiring to speak sends up his name to the chairman, who calls upon such volunteers in order. Toward the close of each session, an informal time limit is imposed. The author of the paper under discussion sits with the chairman and is allowed ten minutes at the close of the meeting to discuss the issues raised by the debate. The chairman usually concludes with observations which bind together the paper and the discussions into a coherent unit. The 1927 conference was singularly fortunate in the choice of its chairman, Sir John Anderson, whose illuminating description of the relations between the minister and the permanent secretary will not soon be forgotten by his audience.

The conference dealt successively with five topics: administrative aspects of social insurance; the respective spheres of public authorities and voluntary organizations in the administration of social services; the powers of public departments to make rules having the force of law; the place of finance departments, committees, and officers in administrative control; and officials and policy. No American student of administration will fail to appreciate the importance of these subjects. The papers presented at the conference are contained in the October, 1927, issue of *Public Administration*. The next conference will be held at Oxford, presumably in the month of July, 1928. The honorary secretary, Mr. H. G. Corner, may be reached at Palace Chambers, Bridge Street, Westminster, London.

The International Congress of Scientific Management held its first meeting at Prague in 1924, its second at Brussels in 1925, and its third

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at Rome, September 5–9, 1927. Dr. H. S. Person, of the Taylor Society, is secretary of the Committee on American Participation in International Management Congresses, and may be reached at Room 611, West 39th Street, New York City. From the outset, American influence has been strong in these congresses, and the Rome meeting proved to be no exception. Fourteen papers were presented by the American delegation, those of chief interest to political scientists being: "The Management of Railroads in the United States since 1920," by John H. Gray, of the Interstate Commerce Commission; "Reorganization of the Governments of the States of Illinois, Pennsylvania, and New York," by Professor Clyde L. King; and "Scientific Management in Municipal Government," by Professor Leonard D. White.

The Congress was organized in four round tables, dealing respectively with industries and trade in industrial products; agriculture and trade in soil products; public services and public utilities; and domestic economies. Papers were written in Italian, French, English, German, or Spanish, and were printed prior to the sessions. Summaries were prepared in French, English, and Italian. The importance attached to scientific management in Italy is indicated by the fact that Premier Mussolini consented to act as president of the honorary committee of the congress, which was held under the patronage of His Majesty the King of Italy.

The governing body of the International Union of Cities and Local Authorities met during the summer in Berne to prepare for the forthcoming congress to be held at Seville next October. Elaborate preparations are being made for this congress, which bids fair to be the most important yet held. Three major subjects will be under discussion, i.e., the financial organization of local authorities, municipal utilities, and eminent domain. With regard to each of these, extensive reports are to be published prior to the date of meeting. Material to be organized in a systematic way by a central committee is now being gathered in each affiliated country. For the United States, the American Municipal Association is the affiliated body. Professor Jerome G. Kerwin, of the University of Chicago, has been appointed director of research for this Association.

The International Federation of Civil Servants and Teachers held its second biennial congress at Nuremberg September 17–20. This Federation includes representatives from the English Civil Service Confederation (now withdrawing on account of section five of the Trade Disputes Act), the Allgemeiner Deutsche Beamtenbund, the

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Fédération Nationale des Syndicats de Fonctionnaires, and similar groups in Austria, Holland, Jugoslavia, Czechoslovakia, and the Irish Free State, the delegates representing about 450,000 civil servants and teachers. In addition to the secretary-general, F. S. Noordhoff of Holland, one noted as leading figures Llewellyn of England, Laurent of France, and Falkenberg of Germany. Dr. Maier, secretary of the I.P.T.T., attended, as well as Professor Lederer, of the University of Heidelberg.

The interests of this federation are primarily economic. At a preliminary conference in Vienna, July 2–3, 1923, "the groups represented agreed to declare that this projected organization should place itself on the territory of syndicalist principles, to wit, recognizing the necessity of a most absolute and a most active solidarity of those who work for a salary. The conference is of opinion that no moral, economic, or social aims can be attained but by the struggle against the international capitalistic powers, and declares that the foundation of an international organization of civil servants may be considered as a most efficacious weapon."

In spite of this declaration, one need not understand the federation to harbor a revolutionary program. The second congress was given over largely to the report of the secretary-general, to a great public meeting which developed into a riot between the nationalist and socialist wings of the audience, and to a trip to Rothenburg. The federation is full of interest to students of public administration who follow the development of the trade-union movement in the civil and municipal service. Its headquarters are at 10 Emmapark, The Hague, Holland, where it publishes a useful monthly bulletin.

LEONARD D. WHITE.

University of Chicago.

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BOOK REVIEWS

EDITED BY A. C. HANFORD
Harvard University

The Social Sciences and their Interrelations. By WILLIAM F. OGBURN AND ALEXANDER GOLDENWEISER. (Boston: Houghton Mifflin Company. 1927. Pp. 506.)

Recent Developments in the Social Sciences. By CHARLES A. ELLWOOD AND OTHERS. (Philadelphia: J. B. Lippincott Company. 1927. Pp. vii, 427.)

The purpose of the first of these volumes is to present an "integral picture" of the social sciences. Its chapters run the gamut from anthropology to education and back again. Seven of them deal with political science in its relation to as many other social studies, namely, anthropology, economics, history, philosophy, psychology, sociology, and statistics. This gives the sociologists and the psychologists a rare opportunity to shy left-handed compliments at the "violent rantings and fantastic claims" (p. 408) of each other. Incidentally, the reader can learn some strange things from this volume, for example, that "the constitution of the United States was largely built upon the foundation of the colonial state governments" (p. 6). What, when, and where were these "colonial state governments"?

To say that the chapter on Political Science and Statistics has been written by Professor John A. Fairlie, that on Political Science and Economics by Professor Clyde L. King, and that on Political Science and History by Professor A. N. Holcombe is enough to assure the readers of this periodical that the discussions are worth attention. Some of the other discussions, moreover, are of similarly high quality and far more provocative. So much, indeed, has been included within the covers of this volume that no brief review can hope to do it justice. The variety of approaches and the clash of opinions are so great that the editors naturally make no attempt to reconcile them. Every contributor has taken a snapshot from his own angle and in keeping with his own ideas of what good focusing implies. If the aim was to get a synthesis, the result surely proves that none exists.

There is not even an approach to consensus on boundaries. Political scientists will be interested to see how easily their own field can be swallowed by something else. Professor Floyd W. Allport, for example, assures us that since all political action is behavior, political science and

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behavioristic psychology become the same thing. But he is kind enough to add that "there will be a difference of opinion as to whether the political scientist should accept a complete merger of his field with that of the psychologist." He can rest well assured of that!

The other volume, by Charles A. Ellwood and six associates, is devoted to a presentation of the newest developments in the various social sciences—sociology, anthropology, social psychology, geography, economics, political science, and history. The chapter on political science is contributed by Professor Charles E. Merriam. Although covering only twenty pages, it outlines in a general way the various advances that have been made in the methods of studying political phenomena during the past quarter of a century. It is much the briefest of the seven chapters in the book, but its brevity should not be taken to imply that there has been less progress in the methodology of political science during this interval than in the other fields.

WILLIAM B. MUNRO.

Harvard University.

Political Philosophy From Plato to Bentham. By GEZA ENGELMANN. Translated by Karl F. Geiser. (New York: Harper and Brothers. 1927. Pp. xxiv, 398.)

The work here translated is, in the field of politics, unique in its method of presentation. From the English title there might be anticipated a history of political philosophy. From the German, *Meisterwerke der Staatsphilosophie*, one might expect to find a collection of important writings. It is neither the one nor the other and yet has aspects of both. The text is divided into thirteen parts. Each is headed by the name of a writer, with the title of one of his works. Under each, Dr. Engelmann has attempted to present in brief form, as by the author himself, the essential thought of the particular work. The language is his own, although in a measure he has adhered to the vocabulary of the author. The work is thus, in a sense, a collection of treatises, though these are rewritten and greatly condensed. It is, in a sense, also a history of political philosophy, in that the manner of presentation permits, and even necessarily involves, an interpretation of each author's thought.

The selection of so limited a number of writers reduces the scope of criticism. Those chosen for exposition are Plato, Aristotle, Aquinas, Dante, Machiavelli, More, Hobbes, Spinoza, Locke, Montesquieu, Rousseau, Bentham, and, in a group, Hamilton, Madison, and Jay. It is an admirable feature of the work that recognition is given to the

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authors of *The Federalist*. The inclusion of Dante and of More appears most open to question. The exclusion of many notable authorities is inevitable. Most apparent is that of Bodin and that of Grotius. A note by the editors explains these particular omissions as arising from the intent of Dr. Engelmann to deal with the systems concerning the law of nature in a subsequent volume (to be followed by yet a third covering German writers). If it be possible to include Bodin at all in the school of nature, it is certainly difficult to identify him with that school more completely than writers included in the present volume, as Hobbes, Locke, and Rousseau.

As between particular writings of the different authors, Dr. Engelmann has usually made the obvious choice. Noteworthy is the discrimination shown in the use of Hobbes' *De Cive* in preference to his better known *Leviathan*. The only other choice among the various works of a writer that might not have been anticipated is that of Bentham's *Introduction to a Project for a Constitutional Code*. To the amount of space devoted to the various writers, again, little exception can be taken, except perhaps in the cases of Bentham and Hobbes. Of the two hundred and seventy-three pages of text, more than forty are given each to Aristotle and Bentham; thirty-odd to *The Federalist*; some twenty each to Plato, Spinoza, Montesquieu, and Rousseau; from ten to twenty each to Machiavelli, Hobbes, and Locke; and less than ten each to Aquinas, Dante, and More.

The presentation of the ideas and arguments in each of the treatises is accurate and sympathetic. The point of view of the author, the general spirit of his work, has been successfully maintained. The separate sketches, if used as introductions to the original works, would unquestionably make them in most cases much more intelligible on a first reading. In form, the present work is not a simple condensation, nor in substance a bare digest. Yet it is, on the one hand, an extraction of what is material, to the exclusion of the non-essential and the relatively unimportant, and, on the other hand, a conscientious briefing in the original order of what has been found to be material to the thought of each writer. The brevity with which the essence of each work is presented, the clarity of the exposition, the modernization of the language, and the consequent elimination in large measure of the tediousness, the difficulty, and the verbal idiosyncracies of the originals, must serve as the justification of a work of such peculiar character. It obviously cannot replace the original works in any serious study. There are no references by which the ideas presented can be traced,

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though there is no great difficulty in locating the passages from which they have been taken.

The editors of the English translation have added nearly one-third to the volume of the work, in the shape of a note and preface to the whole and of introductions to the particular authors, as well as of a brief bibliography. The introductions, occupying a hundred pages, are by Dr. Jászi, with the exception of that to *The Federalist* by Dr. Geiser. They are excellently done and add much to the value of the book; while their not infrequent eccentricities of language do not seriously mar them. The translation by Dr. Geiser is smooth. The reviewer has had no opportunity of comparing it with the German original.

ROBERT T. CRANE.

University of Michigan.

The Origin of the State. By ROBERT H. LOWIE. (New York: Harcourt, Brace and Company. 1927. Pp. viii, 117.)

Mr. Lowie, following up his studies in *Primitive Society* and *Primitive Religion* with this latest short book, has done more than simply carry his anthropological researches into an additional field. *The Origin of the State* is interesting to the student of political science, not simply because of its formal subject. It is anthropology's first avowed contribution to political theory and history. It goes straight to fundamentals—origins, a branch of speculation so dangerously interesting that it has led astray some of the best minds in the social sciences. And it deals by direct implication with all the issues raised for political theory by pluralism, as its chapter headings indicate ("Castes," "Sovereignty," "Associations").

Coming from a department of knowledge that has called itself scientific, and from a worker in that department whose claims to scientific methods are not pretensions, one might expect from *The Origin of the State* a purely objective and unspeculative treatment. But it is not such. To students of the history and methods of social science in general, the book is another evidence of that increasing search for underlying forms by the objective branches already shown in history by Spengler, in political science by Oppenheimer's *Der Staat*, and in sociology of the better sort by MacIver's *Community: A Sociological Study.* In Mr. Lowie's book, the reader sees anthropology, having started by generalizing on meagre details, then going on to monographic objectivity, now returning with a greater factual contribution to speculative, philosophical synthesis.

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The essay deals with the various factors by which human communities have evolved, and may evolve, into modern European states, and beyond. The underlying definition of the state derives from MacIver's *Community*—an association maintaining political order within fixed territorial limits (p. 1). The factors through which political evolution operates, according to Mr. Lowie, may, I think, be fairly subsumed under a very much more generalized, less rigid, version of Oppenheimer's formula: The accretion of power to a class favored by the cultural circumstances of the civilization in which it works. At the very base of Mr. Lowie's reasoning lies the anthropological hypothesis of "cultural continuity"—that there are no sudden breaks in civilization, that all existing culture patterns may be traced back to individual psychological data or to less complex social forms lying within the reach of objective investigation.

In his use of all three of these assumptions—the definition of the state, the Oppenheimer description of its evolutionary dynamics, and the hypothesis of cultural continuity—Mr. Lowie is distinguished by the caution with which he draws his conclusions, a caution which he derives partly from his own scientific temperament and partly from the anthropological discipline which he has so long pursued.

What support for Oppenheimer's schematic progression from pre-state to modernity, what fertile suggestions from primitive lore for the pluralist's argument, Mr. Lowie's book offers, may be left for his readers' investigations. Its chief interest as a combination of field-work and speculative methods lies in its checks, stated and implied, on hasty generalization; and a few examples of these checks may here be cited.

Giving the Somali of Eastern Africa as examples, to an extent, of the Oppenheimer class-scheme, Mr. Lowie nevertheless concludes, upon additional evidence: " . . . . under the spell of sentiment and of religious conceptions, they, like other human beings, are likely to snap their fingers at utilitarian considerations" (p. 24). Later on, "It is clear . . . . that we are dealing with a plurality of factors, that even a military defeat may create castes indirectly rather than through the simple route plotted by the German sociologist" (p. 39). And in his conclusions, "When . . . . we speak of bridging the chasm between a tiny Andamanese settlement and the British Empire, we deprecate the attempt to indicate the various stages by which the simpler would have necessarily tended to approach the latter. What we have tried to do is simply to prove that the germs of all possible political development are latent but demonstrable in the ruder cultures, and that a specific turn in

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communal experience . . . . may produce an efflorescence of novel institutions" (p. 112).

This visit of anthropology into the house of political science might fruitfully serve as an invitation for an excursion of political science into the domain of anthropology. The combination of objectivity and speculation promises a more valuable contribution to knowledge than either alone, or than the substitution of wishful "practical" reform schemes for both.

PAUL LEWINSON.

Ohio State University.

The Theory of Justice. BY RUDOLPH STAMMLER. Translated by Isaac Husick. (The Macmillan Company: New York, 1925. Pp. xli, 591.)

In commenting upon this important and difficult treatise perhaps the first point that should be emphasized is that Stammler's work is a product of that "idealistic" philosophy which, in one form or another, has been dominant in Germany since the days of Kant. Like Kant, Stammler holds the view that the element of preponderant importance in all human thought is the organizing or "formal" element, the projection of the mind itself into the world of phenomena. The general ideas which are inherent in the mind, the "categories" of thought which organize the matter of our consciousness, have their proper function in law and legal philosophy as well as in other departments of thought. He seeks, mainly by means of the logical analysis of concepts, to find universal and penetrating abstract truths and principles which will illuminate the great mass of legal detail, the positive law as historically developed. Stammler believes that these principles, when thoroughly understood and assimilated, can ultimately be brought down to earth and applied to the solution of concrete legal questions.

In order to indicate how Stammler's plan of study works out it will be helpful to refer in a separate way to two of the main divisions of the book. In Part II, the first chapter deals with "The Idea of Just Law," and succeeding chapters develop the central "idea" there presented by means of "principles" stated in rather vague and abstract language. In these chapters the author reaches the culminating point of his effort. Here he explains his conception of the "social ideal" and sets forth his general conclusions as to the essential nature of justice and law.

Now what is the "idea of just law" which Stammler establishes at this critical point of his work? A concrete rule of law that had the quality of justice would be a rule of law that was in accord with the

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general concept or principle of "just law." The essential problem is, therefore, to ascertain the nature or principle of just law as a general concept. The law must be a rule binding men together in social co-öperation. From another point of view, law is a form of volition. The principle of law must, therefore, be such as to harmonize the actual volitions of men. The form or style of this harmonic arrangement cannot be determined by a principle that evaluates the ends toward which volition is directed because: first, such a process of valuation would raise innumerable difficult questions as to the basis and the estimation of values which should be regarded as outside the proper field of legal science; second, it would involve the very serious risk, if not the certainty, that the wills of some men would be unduly subordinated to the wills of others under the guise of attaching preferred valuations to the interests asserted by the latter group.

Therefore, the only possible legal formula is one which will regard the volitions of individuals as *ends in themselves*. We must bear in mind, however, that these are the volitions of individuals firmly bound together in society, so that their respective wills necessarily condition one another with a complex mutuality. But the social ideal should be that the wills of the several individuals should be as free as the never-ending mutual adjustment makes possible. So we come to the formula that the aim which just law strives to realize is a "community of men willing freely." This is the legal ideal, perhaps never to be attained actually in society at large, but the guiding star which indicates the true course of legal development.

The formula may often be applied technically by the use of the conception of a "special community" which may be formed in imaginative thought to comprehend the persons interested in a concrete legal dispute. But this utilization of the formula must be kept in a subordinate position, since the true ideal requires the consideration of remote social interests, and not merely those of the immediate litigants, in order that we may approximate as nearly as possible the larger ideal community, the nation, of "men willing freely."

Turning now to the other division of the book which requires separate mention, we find in Part III that Stammler makes the effort to descend from the grand "principles" so elaborately analyzed and explained in the earlier parts of the book, and to attempt the solution of particular cases by the application of the principles. It is here that we naturally expect the full fruit of the previous laborious effort. But it must be admitted that this is the most unsatisfactory part of the book. The

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author attempts to pass judgment in accordance with his principles on a large number of concrete legal problems, grouped under such headings as, "The Right Exercise of Legal Relations," "Limits of Freedom of Contract," "The Duties of Just Law," et cetera. One cannot escape the impression, however, that the solutions are not really *derived* from the abstract principles heretofore presented. The solutions given may not be out of harmony with the principles, but one doubts whether, as a matter of actual fact, the "principles" are operative and controlling here in determining the author's choice between competing plausible rules of decision. There seems to be a gulf not yet bridged between the abstract principles and their concrete application in particular cases.

Although Stammler himself is not very successful in the task of applying his abstract principles to concrete legal problems, it may nevertheless be said with assurance that his work contains contributions of great and lasting value to legal science. Among such contributions I would list, first, his exhaustive analysis of the chief concepts and ideas constantly used in the legal field; second, his stimulating study of methodology; and third, his conscious employment of a comprehensive and profound theory of knowledge at every step. While the philosophical and legal principles which he so laboriously establishes cannot be readily used as the premises from which we might deduce definite rules of legal decision for particular cases, yet their practical utility in this respect has not been sufficiently tested to justify a final estimate of their value. In any event, the principles may serve as guiding stars whose light may direct and illuminate the development of positive law in its struggle toward justice. Finally, it may be said that Stammler's work presents one of the most successful efforts yet made to coördinate and harmonize the theoretical elements in legal science, not only with the corresponding elements in the other social sciences, but also with metaphysics and the general theory of knowledge.

CHARLES A. COLLIER.

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A History of Socialist Thought. By HARRY W. LAIDLER. (New York: Thomas Y. Crowell and Company. 1927. Pp. xxii, 713.)

The Natural History of Revolution. By LYFORD P. EDWARDS. (Chicago: The University of Chicago Press. 1927. Pp. xvii, 229.)

A History of Socialist Thought, by the well-known executive director of the League for Industrial Democracy, is, as might be expected, a book of many merits. It compresses into one volume the history of

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socialist thought to the present time. It does not detach the socialists' thought from their lives and personalities or from the development of problems and institutions which affect it. The book allows the leaders of the various schools to speak for themselves to a large extent and provides the general reader and the college undergraduate with useful bibliographies of the socialist literature in the English language. All in all, it is a very useful book.

Any attempt to give so much in so little space makes selection difficult; and it is much easier for the critic to see what might have been added than to see what might have been omitted. Nevertheless, more space should have been given to criticism. The criticisms of non-socialists are given little space, either in the texts or in the bibliographies. Dr. Laidler does not even give us the criticisms which his own reading, thinking, and activity have produced. As a result, the book is not as pointed, stimulating, and provocative as the reviewer expected it to be, The author tries to give the opinions of the socialist schools on a wide variety of topics. The resulting brevity of his treatment of any one topic brings it dangerously near superficiality; it does not lead to a searching analysis of their chief peculiarities. For example, Dr. Laidler says little about Marx's theory of value and nothing about Marx's distinction between constant and variable capital. This does not do justice to their importance, and leaves the reader unprepared for later references to "the great contradiction." Again, the reader is expected to understand the rent theory, on which the Fabians say they base their socialism, from G. B. Shaw's confused exposition; the author does not refer to Sidney Webb's withdrawal in his defense against Francis A. Walker. The serious student will get less from this book than from books like Gide and Rist's *History of Economic Doctrines* and *A History of Political Theories, Recent Times*, edited by C. E. Merriam and H. E. Barnes.

So comprehensive a book inevitably raises many questions of fact and emphasis. The reviewer feels that more attention to Engels' *Condition of the Working Class* would have given a deservedly greater emphasis to his contribution to Marxism. When Marx wrote on the Gotha Program in 1875, did he lock horns with the social-democratic followers of Lassalle? Was not his criticism addressed to Bebel and Liebknecht? Dr. Laidler says that the Fabians must have greatly influenced Bernstein's writings. Bernstein once told the reviewer that he was little influenced by the Fabians but largely influenced by the discrepancy between the facts and his early Marxian beliefs. Are

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Fourier and Louis Blanc to be classed as Utopian socialists? Numerous such criticisms of detail are inevitable. But neither major nor minor criticisms alter the verdict; it is a very useful book.

The far-reaching influence of socialistic thought is well seen in *The Natural History of Revolution*. The author, professor of sociology in St. Stephen's College, comes as close as he dares to the doctrine of economic determinism and is "fairly certain that within the next two or three generations a political labor party with socialistic tendencies will appear in the United States—very much such a party as now exists in Great Britain" (p. 218). He begins with the slow development of revolutionary movements and the preliminary symptoms of unrest, proceeds to discuss advanced symptoms and the economic incentive and the social myth, and then describes the outbreak of the revolution, the rise of the radicals, the reign of terror, and the return to normality. For the most part, he draws his material from the Puritan Revolution, the American Revolution, the French Revolution, and the Russian Revolution. The author's contribution is not sufficiently great, I think, for readers of this *Review* to become alarmed at his verdict that "modern political science, so called, is much like medieval physical science, largely a matter of incantations, exorcisms, and witch-hunting" (p. 212). He begins with mechanism but promptly shifts to teleology. He declares that a stable and contented society is one in which four elementary wishes find adequate expression through existing institutions and practices. We do not learn, however, what adequate expression means or how it may be discovered except through instability and discontent. The reviewer doubts that one who believes that ownership should be justified by social welfare must also believe that changes of ownership which promotes the social welefare will ultimately prevail (p. 72).

R. S. Meriam.

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Sozialismus und Faschismus in Italien. By Robert Michels. (Karlsruhe: Verlag G. Braun. 1925. Pp. 338.)

Robert Michels, at present a professor at Basel (Switzerland) and well known in English-speaking countries through his critical study of modern political parties, is singularly in a position to make a distinct contribution toward an understanding of the social background and theoretical antecedents of the movements indicated in the title. The volume reviewed here is the second dealing primarily with fascism. It

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contains a series of historical and sociological essays written between 1910 and 1923.

The work is characterized by an approach which is frequently referred to on the continent as sociological. This method attempts to focus the entirety of a given social environment upon the particular problem in hand. In spite of the danger involved by the necessity of handling a variety of social sciences and their materials, the essays here presented are eloquent testimony of the fruitfulness of such an approach.

The first essay is devoted to an analysis of some "Elements in the History of the Evolution of Italian Social Patriotism." Michels suggests that Carlo Pisacane and Giuseppe Garibaldi may be considered the intellectual fathers of a combination of socialism and nationalism such as we witness in modern fascism. But for a long time their respective points of view remained of comparatively little significance, since they were in striking contrast with the overwhelming internationalism of Italian labor. It is particularly meritorious to have called attention to Pisacane who, as far as I know, has not been given due consideration by writers on fascism.

Even more important is the following essay devoted to "Studies in the History of the Evolution of Italian Imperialism." It is here that the synthetic method above referred to shows its finest qualities. Michels proceeds from a striking and fairly exhaustive analysis of the population problem of Italy to a consideration of the experiment of Tripoli. In doing so he unfolds a highly suggestive picture of the growth of Italian imperialism. It is Michels' opinion that Italian imperialism presents a separate and distinct type in which the demographic aspect predominates.

After analyzing in another essay some elements in the history of the evolution of Italian fascism, which largely contains material presented in English before, he comes to consider some "Elements in the Evolution of Fascism." He lays particular emphasis upon the great material distress which had befallen the Italian intellectuals after the war and which created something like the idea of "a class struggle reversed." It is impossible to analyze in the limited space available the complex array of other forces which Michels traces to their origin. Suffice it to say that those acquainted with the excellent critical studies of the ideology of fascism and its *duce* by Mr. William Yandell Elliott, which have appeared in this journal and elsewhere, will be much interested in the light shed upon the background of the gradual growth

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of fascist doctrine which we have witnessed during the past few years.

But whatever may be the theoretical foundations of fascism, Michels reminds us that the Italian people are a thoughtful, objective, industrious, and peaceful nation. How shall we square this fact with the imperialist tendency which Italy's foreign policy has exhibited lately, to the great disquiet of all her neighbors? Michels calls our attention to a passage in Enrico Corradini's *Il volere d'Italia*: "Come il socialismo fu il metodo di redenzione del proletariato dalle classi borghesi, cosi il nazionalismo sara per noi italiani il metodo di redenzione dai francesi, dai tedeschi, dagli inglesi, dagli americani del Nord e del Sud che sono i nostri borghesi." "Nationalism is to us the same thing that the class struggle is to the proletariat:" (the weapon with which to free us from unbearable pressure). To call attention as forcefully and as convincingly as Michels does to the strongly proletarian nature of Italian imperialism is of high significance. And, just as in the case of the proletariat, it would be narrow to consider only the "economic" side, which has been so forcefully presented in Constantine McGuire's *Italy's International Economic Position*. In this connection Michels rightly calls attention to the inferior social position which Italians occupy in their adopted countries. Thus Italy's new imperialism is based upon the proud consciousness of being culturally and intellectually as well as militarily and politically better than has been supposed hitherto by the world at large. To her it seems that the time has come to throw off the rôle of the Cinderella among the nations, nay more, to be in a position to conquer the place which is due her in view of her culture and intellectual attainments.

It is well to keep this deep-seated urge in mind when considering the actions of modern Italy.

CARL JOACHIM FRIEDRICH.
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National Character. BY ERNEST BARKER. (New York: Harper and Brothers. 1927. Pp. vii, 288.)

This book by Dr. Ernest Barker, principal of King's College, London, and professor-elect of political science in the University of Cambridge, does not leave the impression that its distinguished author entirely enjoyed himself in writing it. It is only at the end, after chapters on the genetic, geographic, economic, political, religious, literary, and educational factors in the making of national character, that we find, in a chapter on "The Signs of the Times" that clear and refreshing exposition which recalls the writer of *English Political Theory from*

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Herbert Spencer to Today. Like grass on the top of a limestone cliff, it comes supported by chapters and sections of grey granules of facts in a formation often lacking igneous vigor and the basaltic boldness of simplicity.

Despite a title which will arouse the suspicions of many, Dr. Barker is no exponent of any theory of race complacency, Gobinesque or Nordic. He is perhaps even too contemptuous of the part played by race, and rigorously separates race from nation. A gulf is fixed between the race and the nation. His own national faith appears to find its inspiration in the *genius loci*, the spirit of the motherland, the spirit of "contiguity." "The sweet ties of neighborliness, strengthened by old and common tradition, which unite the racial blend that inhabits a given territory, and make it a nation of the spirit—which is reality—and not a nation of the body—which is simulacrum. That is true nationalism." This passage occurs in Dr. Barker's last chapter, and we could have wished that it had occurred in his first. For we are left hungry for some defense by the author of his apparent position that it is physical contiguity which is the cardinal factor in that spiritual like-mindedness which is the essence of community and makes a "nation of the spirit."

The book, however, has its polemic aspect. Dr. Barker is obviously gravely concerned with a rival "spirit of the occupation" which inspires political pluralism, guild socialism, "class-consciousness," and the like. He emphasizes even to excess that English individualism, love of eccentricity and contrariness, hatred of regulation and litigiousness of the *Kampflüstige Englander*, which is an obstacle to social progress in the present highly organized condition of our civilization. But he is clearly alarmed by the disruptive spirit of occupationalism, the "tendency to substitute the vocation for the nation." He rightly sees in the group of work-mates another possible like-minded group by the side of the nation, and (not without provocation on the Left) he suspects it of meditating rivalry. What then is the heart, the ideal, of this occupational group? It is the conception of man as the worker, and the affiliated doctrine of efficiency. Dr. Barker prefers "character" to efficiency, self-government to efficacy (p. 169), and insists that man is more than a worker. "Work is a matter of daily and, it may be, deadening routine." Hence, with Bertrand Russell and Mrs. Barbara Wooton, Dr. Barker preaches the doctrine of leisure, "the music we play, the words we write, the hobbies we pursue." "Leisure is greater than work, because it is the growing-time of the spirit." In a decade

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when Englishmen are being told on authority that social legislation is pretty enough but that the country cannot afford it, we may perhaps suspect that there is something very dangerous in this doctrine of leisure. If the country cannot afford social legislation, can it afford leisure—"not only the work which we do but the hobbies we pursue?" If the work is routine work, let us set our intelligence to change it; but the routine of the spirit depends upon the philosophy of the spirit. When challenged by Americanism, fascism, even bolshevism with its Chicago-complex, however exaggerated these may be in their stress on work and efficiency, is this dualism of life between work, considered as routine, and leisure justified?

Dr. Barker carries his position further to an open distrust of the influence of the town. "Urbanization . . . . depresses and weakens, unless social policy is applied to their protection, the force of original thought and original enterprise which is the peculiar dignity of human nature." One thinks of Athens, with Socrates even in its agora, and of modern New York with its competitive demands, and one wonders. One wonders whether Dr. Barker does not confound, as many do, rural worship with the mystical silence of the life of the spirit which Plotinus in his life, and Meister Eckhart by express word, told us was to be found in the marketplace as much as in the field. One agrees, now heartily, with Goethe's sane genius that if talent is built in stillness, character can only be built in the mid-stream of the world.

Even, however, if we believe that *laborare est orare*, that the need of our times is a gospel of humble, unintrospective, austere, efficient work and not of the proud cultivation of spiritual leisure (let alone idle leisure) and of that "soulful" apartness which Hegel said bore the hall-mark of the devil, we must freely acknowledge that Dr. Barker has seized upon very real evils when he points out the dangers of a selfish occupationalism and of a blood-haughty nationalism. We need the leisure, peace and profundity of mind which comes of work at full speed, rationally and harmoniously done in a world of confederate structure and of freely chosen fellowships. Authority lies, not in national might, but in the conditions of efficiency and in love of the brotherhoods. To those who care to have their mind set thinking about these things, and to those many who have looked for a book on nationalism which combines liberalism of outlook with a genuine love of tradition, this work of a ripe scholar and, as every educator should be, of an accomplished midwife of ideas, is heartily to be commended.

G. E. G. Catlin.

Cornell University.

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The American Secretaries of State and Their Diplomacy. SAMUEL FLAGG BEMIS, Editor. J. Franklin Jameson, H. Barrett Learned, and James Brown Scott, Advisory Board. (New York: Alfred A. Knopf.)

Volume I. *Historical Introduction.* By JAMES BROWN SCOTT.
Robert R. Livingston. By MILLEDGE L. BONHAM, JR.
John Jay. BY SAMUEL FLAGG BEMIS.
(1927. Pp. xx, 338.)

Volume II. *Thomas Jefferson.* By SAMUEL FLAGG BEMIS.
Edmund Randolph. By DICE ROBINS ANDERSON.
Timothy Pickering. By HENRY J. FORD.
John Marshall. By ANDREW J. MONTAGUE.
(1927. Pp. ix, 322.)

Volume III. *James Madison.* By CHARLES E. HILL.
Robert Smith. By CHARLES C. TANSILL.
James Monroe. By JULIUS W. PRATT.
(1927. Pp. ix, 321.)

The idea of a series setting forth the public services of the secretaries of state of the United States is to be ascribed to the late Mr. Gaillard Hunt (to whom the published work is now appropriately dedicated) and to Dr. James Brown Scott, and the original plan was that they were to be the editors. The untimely and lamented death of Mr. Hunt resulted in the selection of Professor Bemis as editor and the creation of an advisory board consisting of Messrs. Scott, Jameson, and Learned. President Nicholas Murray Butler contributes a preface in which he states the general purpose of the series, which is expected to run to a dozen or more volumes, to be "to record the history of a great public office in terms of the lives of the men who have sucessively held it, as well as the history and the development of the international policies of the government of the United States in terms of the public acts and expressions of the men who have been successively charged with the statement of them."

This announcement of the aims of the project indicates some of the difficulties of the task, the first and foremost of which is the nature of the office itself. When the first Congress under the Constitution created the office and defined the duties of the secretary of state it recognized the nature and extent of the president's control over the conduct of foreign relations. The position of the secretary at any one time depends upon two variables: his own personality, character, and ability, and the personality, character, and ability of the president.

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And, again, the more important the foreign matters presented, the more the president's responsibility and authority have tended toward presidential determination of policies. Therefore, in estimating the impress upon the foreign policy of a secretary of state one might hope to learn what ideas were contributed by him, what by the president, and to what extent the ideas of the secretary influenced the president in his ultimate decisions. Certain secretaries of state, not many, are definitely regarded as the authors of policies: J. Q. Adams, Webster, Seward, Blaine, Hay, and Hughes. Some are just as clearly the mouthpieces of the president. To appraise the others is no easy task. The difficulties of such a work suggest a tendency of another sort, namely, to present a narrative diplomatic history of the United States with a coöperative authorship, the absence of faults of such coöperation being to a large degree dependent upon the rigor of the editorial supervision. A reading of the three volumes now appearing gives one an impression that this latter is the type of work which the editor has given us.

Dr. Scott's "Historical Introduction" (pp. 111) is an account of the diplomatic negotiations through the signing of the peace treaty of 1783. It is a well-written and instructive chapter, in which the Jay tradition or myth is largely discarded and Franklin is brought back, with considerable enthusiasm, into the center of the picture. Had we acquired Canada, some difficulties might have been avoided, the fisheries controversy, for instance; but one may be pardoned for not accepting the dicta of Francis Wharton and Senator Bruce that Franklin might have been successful in securing Canada if properly backed by Adams and Jay (pp. 66, 302). The inclusion of chapters on the two secretaries of foreign affairs under the Confederation is wise, not only because it is high time to single out the services of Livingston and Jay in this position, but in order that their work may be appraised as compared with that of secretaries of state under the Constitution. The nature of the Continental Congress of the later Confederation period made it possible for Livingston to stand out as doing "more than any one in the home department in its foreign policy." The essays on Livingston (by Professor Bonham) and on Jay (by Professor Bemis) conclude the first volume—altogether a fresh and excellent portrayal of our diplomacy down to 1789.

Volume II contains essays upon the first four secretaries: Jefferson, by Professor Bemis; Randolph, by President Anderson; Pickering, by the late Professor H. J. Ford; and Marshall, by Governor Montague. Professor Bemis has elsewhere shown to what an extent American

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foreign policies under Washington were determined by others than the secretaries of state. Here he concludes that "as secretary of state Jefferson was not destined to bring any of the great problems of foreign policy to a satisfactory settlement" (p. 92). Yet one of the greatest contributions to the permanent (until 1913) American policy was made by Jefferson in his instructions to G. Morris of March 12, 1793, as to the recognition of new governments—a matter strangely neglected by Professor Bemis. The concluding chapter of President Anderson's essay is entitled "Randolph's Ruin." One can hardly allot much to this secretary, for while the neutrality proclamation of 1793 is ascribed to Randolph (p. 131) by President Anderson, Professor Bemis states that Jay drafted it (p. 69). Jefferson certainly stated (to Monroe, July 14, 1793) that "E. R." drafted it. No one would claim that Pickering was a man of charm, or that he was a diplomat, but Professor Ford has drawn a portrait of this dour controversialist which will last. Something might have been said as to Pickering's influence on the changed attitude toward sea law to be observed in his instructions relative to the renewal of the Prussian treaty, for in them the United States adopted the rule of the Consolato as the rule of international law. Marshall's services as secretary of state were brief. Great Marshall was—he might have been one of the greatest of secretaries had he not been called to another sphere—but to say that his instructions to King of September 20, 1800, are "perhaps unequalled in the diplomatic contributions of the English-speaking world" (p. 265) is perhaps just a shade hyperbolic.

The third volume covers the secretaryships of Madison, Smith, and Monroe, and carries the narrative through the treaty of Ghent. Madison is done by Professor Charles E. Hill, Smith by Professor Tansill, and Monroe by Professor Pratt. Some effort is expended in trying to make something out of Smith, whom Madison distrusted. The wonder is that Madison stood him as long as he did. Still, Smith had no pleasant job in trying to receive and tolerate the egregious Jackson. Smith's mendacious utterance to Turreau seems to have been inspired by Madison (p. 186). Professor Hill's essay on Madison is carefully done, but it might, after all, be entitled "the conduct of foreign relations under Jefferson." What did Madison really contribute as secretary of state? Perhaps not much. Nor did Monroe. Professor Pratt has given us a portrait of the man as secretary of state, and it cannot be called flattering. Having an unsuccessful record in diplomacy, Monroe went into the cabinet under an extraordinary pledge from the president:

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"He must have the actual direction of the nation's foreign relations, with conciliation with Great Britain as a chief object" (pp. 213-214). If he so began, he soon abandoned his chief object: "All Monroe's wishes for a friendly understanding with Great Britain were destined to be crushed between the fixed idea of his chief and the inflexibility of the British government" (p. 217). It is true that he drafted the instructions to the peace commissioners, which have "considerable historical interest" (p. 268); but he did not "shape the outcome," and the "credit for the tolerable result fell to the share of the five Americans in Ghent."

In the three volumes thus issued the original plan seems to have been reasonably well carried out. The various essays have been written after careful examination of source materials and recent monographs. If the reader is a bit confused as to the contributions of each secretary, it is due, as has been suggested, to the character of the office of the secretary of state. Much easier would it have been to write of the foreign policy of Canning, Palmerston, or Grey, or of Bismarck, Briand, or Stresemann. If one is somewhat depressed by the volumes, it may be because most of these secretaries were, after all, not first-rate diplomatists—or that their chiefs were not—or both.

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Party Government in the House of Representatives. BY PAUL DEWITT HASBROUCK. (New York: The Macmillan Company. 1927. Pp. xii, 265.)

In the past quarter of a century, and particularly since the war, a great deal has been written about American parties. The flood of special studies and systematic treatises has steadily risen. This formidable literature has tended to concentrate upon what may be termed the extra-governmental aspect of organization and activity. Too little light has been shed upon party processes within Congress and the state legislatures; and, although Dr. Hasbrouck has followed a trail already blazed by Alexander and Brown, his contribution to our knowledge of the wilderness is very serviceable indeed. No one will read the book without remarking the serious attention to detail. Dr. Hasbrouck has pored over the pages of the *Congressional Record*; as an attentive observer of the daily proceedings of the House he has found out what the rules mean in practical operation; and he has applied to veteran

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politicians for an understanding of the less obvious but more vital transactions that occur behind the scenes.

The predominance of the Speaker in the time of Reed and Cannon, we are told, "was scarcely more than a transitional step on the way to frank party control." Nowadays, though still possessed of some discretionary power, the Speaker serves the majority by enforcing without bias rules that the majority have framed to facilitate their control of business. If he is a leader, he leads because of personality and experience. But his old authority has not passed intact to any individual. It has been broken up, dispersed, scattered more and more widely in successive congresses. Leadership now rests, not with the floor-leader alone, but with the committee on committees, the steering committee, and the rules committee as well. Dr. Hasbrouck explains the new arrangements—at least in so far as they affect the party in control of the House. He also considers at some length the composition and work of the standing committees. In a most interesting chapter he deals with the election returns during the period 1914–26 inclusive. He shows that 148 districts remained steadfastly Republican and 122 Democratic; that urban districts more frequently shift from one party to another; and that the percentage of reëlected representatives rose from 68 in 1916 to 81 in 1924 and 88 in 1926. Fully a quarter of the book is occupied with the history of the rule for the discharge of committees and with the author's own proposals with respect to it. To this subject he attaches more significance than it would seem actually to possess. His judgment seems open to question in other directions, as where he attributes the two-party system to the struggle for possession of the presidential office, or where he says that local government "comes closer home" to the urban voters than to the rural and thus induces greater political activity.

The book has one capital defect: incoherence. Not only is there a lack of symmetry and logical design in the development of the subject, but the relationship of particular statements to the context is sometimes not at all clear; and, worse still, the ordinary rules of grammatical construction are frequently violated. We are told, for example, that Mr. Cannon was elected as Speaker "for a fourth term—a longer consecutive period than any previous Speaker had occupied the chair." Such vagaries might be due to carelessness. But what shall be said when, over and over again, in the use of words the most singular improprieties are encountered? For example: "This will be the intent [that is, the subject] of Chapter X;" Longworth's influence "continued

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incisive;" "the brunt of the work is done off the floor;" Bourke Cochran is "a peer of Democratic speechmakers;" "closure in its more strenuous form has not lately been applied." A straightforward statement by Walter Bagehot is called an innuendo. Words are misspelled, like "combatting" and "*ralliément*." Round brackets are used in place of square brackets.

In the matter of form, then, Dr. Hasbrouck has laid himself open to serious criticism. When he goes afield from his immediate subject, he also commits errors of fact. He asserts that the kings of England, in the early days of Parliament, alone had the initiative in proposing laws; that "some" of the Southern states besides Texas have, by statute, excluded negroes from voting at the primaries; and that down to 1824 Federalists as well as Republicans nominated their presidential candidates in Congressional caucus. Without further illustration, it may be said that the defects are so manifest and so numerous that they tend to discredit a competent piece of research; and for that reason, seeing that his work shows real merit, the author should undertake a thorough revision.

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Scripps College.

The Department of Justice in the United States. BY ALBERT LANGELUTTIG. (Baltimore: The Johns Hopkins Press: 1927. Pp. xvi, 318).

This analytical study, appearing in the "Studies in Administration" series of the Institute for Government Research, and minutely documented, covers the history of the office of the Attorney-General, the evolution of the Department of Justice, and the jurisdiction and powers of the various administrative officials associated with that department. The book is noteworthy for its accuracy of statement, as well as for the amount of painstaking labor which has gone into its production. The powers of the Attorney-General, and in particular those of his administrative aides, have been the result of a slow evolution, developed under a multitude of statutes, and nowhere else can be found so complete and comprehensive a review as this author presents.

Mr. Langeluttig has rendered a timely service of special value in outlining the anomalous situation caused by the aggressively independent attitude of the Comptroller-General and his refusal to recognize the opinions of the Attorney-General as binding upon his department. When any official asserts dogmatically in a controversy over his own powers that the matter involved is not "proper for submission either

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to the Supreme Court or the Attorney-General," serious friction is likely to result. Congress should deal promptly with this situation before more serious conflicts develop.

In urging a unification of the various intelligence services of the government which deal with detection of crime, the author has made an excellent recommendation. It might have been strengthened by a description of the difficulties in administration which arose during the World War, resulting from the independent operation of intelligence services under the control of five major departments. The administrative powers of the Attorney-General are more elastic and far-reaching than indicated by these statutory provisions. During the war an emergency division was created within the department with a large staff of lawyers, none of whom were provided for in the standing appropriations, and many of whom exercised, under the designation of the Attorney-General, very comprehensive powers. A history of the war period would show that the discretionary powers of the Attorney-General are also more far-reaching than the statutes indicate, and that in times of crisis the exercise of these powers may become powerful factors in influencing the trend of public opinion. In a revised edition, a study of this period would add valuable material to an already important compendium.

It seems inevitable that the book as it stands should become the standard authority on the jurisdiction, powers, and limitations of official power of all persons associated with the Department of Justice; and it might profitably be studied by all of them.

JOHN LORD O'BRIAN.

Formerly Assistant Attorney General.

American Government and Citizenship. By CHARLES E. MARTIN AND WILLIAM H. GEORGE. (New York: Alfred A. Knopf. 1927. Pp. xvi, 764.)

This comprehensive book, intended primarily as a text, is an outgrowth of "several years experience in teaching American government." "The purpose of the authors has been to relate the entire book, as far as possible, to the actual conditions and problems of civic life." In their endeavor to do this they have departed from the plan of standard works, such as Ogg and Ray, Beard, and Munro, by introducing certain new subject matter, in apportionment of space, and in the arrangement of material. The work is divided into three sections: "The Political Theory of the United States"; "The Government and Politics of the

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United States"; and "Foreign Relations of the United States." The last subject is allotted three hundred pages; "Government and Politics of the United States" about three hundred and fifty. The noteworthy fact is that in this second part not only are the institutions of government, national, state, and municipal, described, but also constitutions, political parties, and citizenship.

In the first four chapters, under headings like "Political Theory of Colonial Origins" and "Political Theory of the Founding Fathers," the authors combine a political description of the colonies with an analysis of the controversy between the colonies and England. Their treatment of the "colonial background," faithful to traditional views, sets forth the political ideas originating or developing from the American conditions. Too great emphasis may have been placed on the imperialistic motive in colonization. In the fourth chapter the problem of state and national government jurisdictions is considered. Many will disagree with the statement that the defeat of the efforts to regulate child labor by national action is "conclusive proof" of a public opinion opposed to further centralization.

The authors state in their preface that they have "set forth in a more condensed form than in the majority of current studies the essential facts of American political organization," and that they have attempted to "cut through the rather rigid divisions of government, and to emphasize functions and ideas." While their purpose may be commended, it is doubtful if they have completely achieved it. The description of the governmental structure is hardly adequate. It is very largely an elaboration of constitutional provisions, legalistic in tone, and deficient because of the omission of essential material. The analysis of the constitution seems to be a vindication of the American system. The powers of the president are discussed individually, with little notice of the relationship of each to government in general. No differentiation is made between his executive and legislative functions. The explanation of the legislative branch of the government is clear. More attention might have been given congressional procedure in the broad sense. The description of the courts and their duties is much the same as in other texts. Judicial review is not mentioned in this chapter, although it is briefly treated elsewhere. An important rôle in government is claimed for administration, but little space is devoted to defining it. The merit system receives casual mention and the budget system of the federal government none at all. One of the most lucid statements of the position of the individual in the United States in

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relation to government that the reviewer has encountered is found in the chapter on "The Constitution and the Citizen," although he thinks the title inaccurate and would question the obligation of the citizen to stand "staunchly against the disintegrating forces of anarchism, in whatever guise they appear" (p. 386). The history of party alignments in the United States is told briefly and is the orthodox version, especially the account of the rise of the party system. The discussion of platforms is long and somewhat confusing. Throughout this entire section of the book there is a notable lack of critical tone. The authors do make, however, what many readers will consider an ill-advised and ineffective effort to discredit Mr. Beard's economic interpretation.

An exposition of the principal foreign policies developed by the United States, traced from their inception, and a description of diplomatic procedure as practiced by the United States constitute the third section of the book, in many respects the best part. The selection is sufficiently inclusive to portray American foreign policy. The account is fairly accurate although idealistic. There are a few minor errors—the American treaty of Lausanne has not been "definitely rejected by the Senate" —but they do not detract much from the description of diplomatic practices.

The authors have presented a book which represents a bold attempt to get away from what is often considered to be an artificial classification of subject matter. In spite of the numerous defects mentioned, it is suitable for use as a text for courses in American government. However, it would have to be supplemented by other reading. A serious defect of the work for class-room use is the omission of the text of the Constitution.

HOWARD B. CALDERWOOD, JR.

University of Michigan.

The New Governments of Eastern Europe. BY MALBONE W. GRAHAM, JR. (New York: Henry Holt and Company. 1927. Pp. xii, 826.)

Three years ago, in his *New Governments of Central Europe,* Professor Graham dealt with the republics that rose from the ruin of Hapsburg and Hohenzollern empire. Now, on the same plan and scale, we have the dissolution of Romanoff empire and the rise of soviet Russia, republican Poland, and the four Baltic democracies of Finland, Esthonia, Latvia, and Lithuania.

The plan involves first historical description, then documents. Anatomy and physiology are mingled. That is to say, the constitutional

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and legal institutions are analyzed; then the parties and other political influences are portrayed, as they shape those institutions and determine their functioning. There is in every case a summary description of pre-war conditions, but the bulk of space is given to the tortuous course of events during the war and the nine years following. There follows an invaluable collection (242 pages) of relevant documentary material; not only constitutions, but treaties, statutes, decrees, parliamentary resolutions, statements by statesmen, programs of parties. These are presented without comment. It will be for the future political student to exploit and analyze this treasure, and develop the history which the author could here only sketch.

From the former volume is continued the ingenious attempt to portray in graphic form the political history since 1917, measured by the time scale. There is a graph for each country (except Russia, whose absence one regrets, though appreciating the reason: there have been no parties whose growth or decline can be measured, no premiers to rise and fall). For every month of the decade one sees the political picture—who is prime minister, what parties are in parliament, with what strength. There is even an attempt to indicate, by shading, the pro-government or opposition attitude of each party. Inevitably, this attempt involves many doubtful points. There is much Gordian knot-cutting. But at least the large outlines are made clearly understandable.

One might question the validity of the scale on which space is distributed. Twenty-nine per cent of the pages go to Russia (of which one-fourth is historical background serving all six states), twenty-two per cent to Poland, and to the four minor Baltic countries actually forty-six per cent. Presumably the justification is the author's obvious conviction that democratic institutions, not utopian economic experiments or precarious absolutism, are the real interest of his reader. The student of comparative government is informed at great length of the twists and turns by which constitutional draftsmen in what are usually regarded as unimportant states have met the world-wide problems of free government. Shall the executive be subjected to the day-to-day vicissitudes of the fragmentary parties that result from proportional representation? Shall representation be in one chamber or two? May a court declare the nullity of that representative body's legislation? Can the voters control government's action by initiative, referendum, and recall? Is the dominating agrarian problem of land distribution soluble in law and peaceful administration? Such questions of political and administrative science have been occupying the statesmen of

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Weimar, and now of Warsaw, Helsingfors, Tallin, Riga, and Kaunas. Under what external political and internal economic pressures, and with what mutual imitation and avoidance of errors, these constitutional contrivers have said their say in fundamental law—this is set forth in full detail. The description is eminently worth while, though experience with these structures is still slight, and the Polish and Lithuanian *coups d'état* of 1926 may have been rather disturbing to the author.

Mr. Graham does not conceal his personal judgment on tendencies or on details. The fairly frequent use of such words as "sane," "rascal," and "fatuous" may be bold procedure. Yet to this reviewer it seems that on the whole an eminently sound judgment has informed the treatment. The reader has a sense of confident, competent guidance through the jungle of unfamiliar names and political forces; he feels that he now has the clue to guide him in the identification of references in the press and in his estimate of the flood of official propaganda.

One may note in conclusion that, in contrast with much current comment on fascist and Balkanizing tendencies in Europe, the keynote of this extremely useful work is democratic optimism.

HENRY R. SPENCER.

Ohio State University.

China and the Occident, the Origin and Development of the Boxer Movement. BY GEORGE NYE STEIGER. (New Haven: Yale University Press. 1927. Pp. xix, 349.)

Handsomely printed and bound, this book appears as the seventh to be published by Yale University from the Mather Memorial Fund. Its sub-title explains the author's principal theme, the earlier chapters, which comprise considerably less than half the text, serving to provide an analysis of the forces in Sino-foreign relations, since the sixteenth century, which conditioned the Boxer movement. Appendices contain the essential documents of the post-siege settlement.

Professor Steiger's thesis may be stated best in his own words: "During the months which followed the seizure of the Taku forts, the Chinese people, with the approval and leadership of the more reactionary elements among the official class, poured out upon the helpless missionaries and native Christians their accumulated store of bitterness and rage. . . . . For these atrocities . . . . there can be no excuse. Yet these crimes were not, as has been so often charged, the result of a deliberate conspiracy; they were the work of an infuriated people,

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whose fury had been aroused to the breaking point by a long series of foreign aggressions" (pp. 281-2).

The differences between Chinese and Occidental political ideas, the author believes, were the essential cause of the failure to evolve smooth working relations between China and Western states. The latter did not grasp the reality of devolved power behind the facade of despotism. They did not understand why treaties were made only to be disregarded nor why a commercial people had no commercial law. They translated the natural reactions of the localistic, communal Chinese into expressions of antagonism—which they subsequently became. At first, and up to the latest years of the nineteenth century, anti-foreignism was "almost entirely associated with the spread of Christian missions" (p. 33). Weight is attached to the reality of the common people's opinion on so quiet an event as a naval concentration off Taku (p. 109). ". . . . fear of the foreign powers was spreading among the people in all parts of the land, and was beginning to produce among the mass of the Chinese people a spirit of militant national patriotism" (p. 127). The Empress Dowager is credited with personal instigation of the several steps by which the country's defenses were improved, the "battle of concessions" terminated, and the spirit of the people stiffened toward the contemplation of hostilities with the hitherto-obeyed foreigners.

Dr. Steiger rejects the Lao Nai-hsuan theory of the origin of the I-ho Chuan and presents evidence that they grew out of the existing system of *tuan*—local, self-constituted but officially recognized militia bands, or *vigilanti*, which the Empress Dowager had encouraged in the northern provinces as a measure of reform in the direction of a strong army. He admits the difficulty of accounting for the spiritism of the Boxers, but advances the suggestion that it may have been drawn in part from imported forms of drill, in part from Christian phraseology. The anti-foreign animus was directed against Christianity not as a religion but as a contributing element to Occidental aggression. A clear-cut contrast between the methods of Yuan Shih-kai in Shantung and of the Chihli administration, the former able to follow Chinese principles in reducing the Boxer fever, the latter compelled to harsher tactics by the necessity of attending to diplomatic protests, affords material for contemporary statesmen. Yuan succeeded, the Chihli authorities failed. This point—the aggressive attitude of the legations —the author stresses as mainly responsible for the failure of the government to restrain the Boxers and for its own ultimate decision to make common cause with them.

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The study discloses extensive use of the state papers of several countries, of mission files, and of newspapers published in China. Written with spirit, it is at once a work of high scholarship and of general interest, without question the most thorough analysis yet presented of the causes and character of the Boxer troubles. There is, however, need of a second study of the same problem from the Chinese records. Until such a study is made, the last word will remain unwritten upon a number of contentious points, among them the origin of the Boxers, the extent and intensity of popular feeling, the part played by the Empress Dowager and the officials in the movement, and the degree to which it was anti-Christian. In some instances Professor Steiger's conclusions strike one as bending a little toward the furtherance of a thesis, in others as decidedly more positively stated than the evidence presented would warrant. On the whole, however, his thoroughness in research and his courage in attacking issues in controversy render this monograph an impressive contribution to our knowledge of Chinese history.

HAROLD S. QUIGLEY.

University of Minnesota.

Teaching the Social Studies. BY EDGAR DAWSON AND OTHERS. (New York: The Macmillan Company. 1927. Pp. xiii, 405.)

This book is an addition to the continually growing list of efforts to enable secondary school teachers to understand the task they are undertaking and the best ways of performing it. Of its sixteen chapters, eight are written by Dr. Dawson himself, and the others by specialists in particular fields. The names of Munro in political science, Johnson in history, and Giddings in sociology, for instance, show the high quality of the collaborators whom Dr. Dawson succeeded in enlisting. The interpretation of the term "social studies" is so broad that one wonders whether it may lead to jurisdictional disputes, for one finds here chapters on biology and psychology as well as the subjects which are more commonly included in the perhaps too limited connotation of "social studies." The chapters on specific sciences undertake to show the contributions that each science makes to the understanding of human progress. One would hardly expect that all would be of equal value.

Dr. Dawson's own chapters, indeed, constitute that part of the book which will be of the greatest worth to the teacher who wants to know *how* the job should be done. He does not undertake to be unreasonably

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dogmatic, for, as Professor Munro well says, "there is no best method, no ideal method." The chapters on "The Social Studies Laboratory," "Tests and Examinations," and "The Teacher of the Social Studies," are among the best brief discussions that have appeared on these themes.

The reviewer believes there is more justification for a one-year course in world history than Dr. Dawson finds. He cannot quite agree, either, with Dr. Dawson's idea that, if a school has too few trained teachers of the social studies to meet the demand for these subjects, the surplus pupils should be forced to study some other subject for which a trained teacher may be available. Political science, history, sociology, and economics can make their own contribution to information and mental growth under an inexperienced teacher, or even no teacher at all. An occasional disagreement with the author, however, will not weaken the impression that Dr. Dawson is earnestly seeking to bring about better teaching of the social studies, and that his labors as represented in this book are highly commendable.

R. O. HUGHES.

Peabody High School, Pittsburgh.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND CONSTITUTIONAL LAW

Readings in American Government (Holt, pp. xiv, 354), by Dr. James K. Pollock, of the University of Michigan, is the latest compilation of selections for use in introductory government courses. In the choice of material the editor has "attempted to make selections which will be helpful and clarifying, and which at the same time are more or less classic" and to "bring the student or general reader into contact with many of the significant men who either occupied the governmental stage or have been peculiarly situated to depict the important phases of American politics." In carrying out this aim he has given short extracts from the writings of such persons as John Adams, Hamilton, De Tocqueville, Madison, Jefferson, Webster, Cooley, Cleveland, Roosevelt, Root, Wilson, etc. There are also readings chosen from important decisions of the United States Supreme Court. The usefulness of the volume is increased by short notes at the beginning of each selection telling something of the author and the significance of his remarks. The arrangement of material is good and the book is printed in clear type. All in all, it is a worth-while volume and not simply another book of readings.

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Uncle Joe Cannon: The Story of a Pioneer American (Holt, pp. xliv, 362), as told by L. White Busbey, for twenty years his private secretary, is somewhat unique in that the first person is used throughout although the work is not truly an autobiography. As Mr. Cannon writes in the foreword: "I have gone over the record of my span of life with Mr. Busbey in a reminiscent way and he has sifted the grain from the chaff. It is my story, but his book." Of particular interest are the chapters telling of the westward movement of the Cannon family from North Carolina to the banks of the Wabash and those narrating the subject's later career as congressional leader and Speaker. There is little that is new in the book, but the point of view and interpretation of events make it especially valuable. On the other hand, there are one or two matters which have been made public for the first time, such as the account of how Cannon saved the step-mother of Abraham Lincoln from prosecution for charges brought against her at Charleston, Illinois, while Lincoln was president (pp. 108–112), and certain facts connected with the appropriations for national defense at the beginning of the Spanish-American War. Students of American government and politics should be grateful to Mr. Busbey, who died before the work was finished, and to his wife, who carried it to completion, for giving us such an interesting and readable account of the career of one of the most colorful political figures of the generation which has just passed.

Immigration Restriction, A Study of the Opposition to and Regulation of Immigration into the United States, by Roy L. Garis (Macmillan Company, pp. 376), gives an excellent outline of the various legislative enactments which have dealt with this problem and with their administration. Professor Garis treats the question in historical fashion, showing that immigration restriction comes down to us from colonial days. He also gives the arguments which led public opinion to demand the passage of these different immigration laws, but does not try to pass upon their merits. The author does not offer any solution of his own, but there is no doubt that he favors restriction of some sort. The book, as the title says, is a study, not a piece of propaganda. Another aspect of the same problem is found in *The Polish Peasant in Europe and America*, by W. I. Thomas and Florian Znaniecki (Vol. II, Alfred A. Knopf, pp. 250). The authors seem to have studied the Poles in Chicago and nowhere else in America. They have delved into the records of the Chicago Legal Aid Society and the Juvenile Court of Cook County and set forth case after case full of filth. The book seems

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inclined to disregard the Poles who do not live in Chicago and who do not get into trouble; the result of which is that the book proves nothing.

Recent publications of the National Industrial Conference Board include the fifth in the series of studies on *The Cost of Government in the United States, 1925-26* (pp. 294); a study of *The Fiscal Problem in Illinois* (pp. 219); and a volume on *Industrial Progress and Regulatory Legislation in New York State* (pp. 148). The study on the cost of government shows that while per capita expenditures and taxes for national, state, and local governments in the United States had decreased slightly in 1925 from 1924, there was a substantial increase in total taxes for 1926 above those for the previous two years, establishing a new maximum. While the expenditures and taxes of the national government have continued to decrease from the war-time peak, state and local expenditures continue to increase steadily.

Those who are familiar with Constantine Panunzio's *Soul of an Immigrant* will be interested in the same author's more recent book, *Immigration Crossroads* (Macmillan, pp. 307). It deals with immigration problems from an immigrant's point of view. The author claims that our present immigration laws are not accomplishing their true purpose and suggests some remedies.

A Senate document on the abolition of the secrecy of party funds by Perry Belmont, which was printed twelve years ago, has now been republished, with the addition of a long author's preface, in a volume entitled *Return to Secret Party Funds* (G. P. Putnam's Sons, pp. xlv, 211). The preface deals with the investigations made since the document was first compiled.

The second volume of *Our Times*, entitled *America Finding Herself*, by Mark Sullivan, has been published by Scribner's (pp. 668). It is, like the first volume, a conglomerate mass of material: school readers, popular songs, political figures, pure food, trusts, automobiles, and the beginnings of aviation. The chief pleasure to be derived from reading the book is the ability to keep saying "I remember that."

Four volumes of the *History of American Life*, which was announced some time ago as forthcoming under the editorship of Professors Schlesinger and Fox, have recently appeared and seem fully to justify the high expectations that preceded their appearance. The first volume, by Thomas J. Wertenbaker, covers the period down to 1690. Then

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James Truslow Adams brings the story to 1763. Carl Russell Fish writes the volume dealing with the era 1830–1850, and Allan Nevins writes on *The Emergence of Modern America* (1865–1878). The other volumes are to appear presently. From every point of view the series promises to be a most valuable one.

Professor Carl Becker's readable short history of the United States, first published in 1920 under the title, *The United States: An Experiment in Democracy*, has been reprinted (Harper, pp. 332) under the slightly revised title, *Our Great Experiment in Democracy*. The content of the book is unaltered. It is a popular but interpretative rather than factual history of American political and economic development. A review of the earlier book will be found in this journal, volume XV, page 616.

By arrangement with Harper's, a three-volume set containing *Selected Literary and Political Papers and Addresses of Woodrow Wilson* has been brought out by Grosset and Dunlap. This forms a convenient, moderate-priced edition which many students of history and politics will be glad to have.

A useful volume on *Practice and Evidence Before the U. S. Board of Tax Appeals* (pp. 222), by Charles D. Hamel, is published by Prentice-Hall. The author served as the first chairman of this board.

Foreign and Comparative Government

Traité Élémentaire du Contentieux Administratif—Compétence, Juridictions, Recours, by Jean Appleton (Paris: Librairie Dalloz, pp. 665), is most valuable for a better understanding of recent tendencies in the development of French administrative courts. It is well known that French administrative law is in a large part the result of judicial interpretation by the *Conseil d'État*. Inasmuch as the last edition of Laferrière's famous *Traité de la jurisdiction administrative et des recours contentieux* was published in 1896, students of comparative government will receive Professor Appleton's work with satisfaction. The author, after dealing with the general principles involved in the separation of administrative and judicial authorities, takes up in detail the various aspects of *contentieux administratif*, which he defines as *l'ensemble des litiges intéressant les services public.* This leads him to consider (1) the competence of administrative authorities (Book II); (2) the procedure before the different administrative courts (Book III); and (3) the actions

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which may be brought against such administrative authorities before these administrative courts (Book IV). While this treatise is elementary in scope, it will enable the reader to grasp some of the broader problems of administration which are encountered in the modern state. It is quite fortunate that this book should follow right on the heels of Mr. John Dickinson's *Administrative Justice and the Supremacy of Law in the United States*. Can the many functions (*services publics*) which the modern state has to undertake in all the fields of social friction created by the growth of industrial civilization be distributed on the basis of such a distinction as "questions of fact" and "questions of law," or will it be inevitable to revamp the entire system of judicial procedure on the basis of the nature of the suits involved? If Professor Appleton does not afford us an answer to this question, he at least shows us clearly the results obtained by employing the second alternative. His analysis is the more interesting as it takes into account the broader principles evolved by Professor Duguit. C. J. F.

Gladstone and Britain's Imperial Policy, by Paul Knaplund (Macmillan, pp. 236), is divided into two parts, the first being the author's account and interpretation of this policy, and the second a collection of speeches, memoranda, and letters giving Gladstone's views in his own words. The purpose of the book is to show that although Gladstone did not desire a closer connection between England and her colonies, he did indeed hope for "a union of many happy Englands, a Commonwealth such as the one which is now taking fairly definite shape." In the same field is a convenient little manual on *Empire Settlement* by Sir John A. R. Marriott (Oxford University Press, pp. 134). The writer does not attempt to cover the subject of the dependent empire, but there is an outline of the settlement of British North America, Australia, New Zealand, the Union of South Africa, and Rhodesia. There is also a very suggestive chapter on "The Machinery of Migration."

British War Finance, 1914–1919 (Columbia University Press, 1927, pp. 316), by Henry F. Grady, is a general survey of the financial experience of Great Britain during the war and for a year following the armistice. The book was written in London, largely in 1919 when the author was serving as American trade commissioner, and was subsequently presented as a doctoral dissertation at Columbia University. The principal subjects treated are: financial mobilization, government revenue, government borrowings, banking during the war, the money

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market, and financial reconstruction. Political scientists will probably find of most interest the chapter on government revenue, which presents, among other things, a convenient summary of war-time taxation, a history of the various taxes and their yields, and a criticism of the excess profits tax and of the country's war-time taxation policy in general. The opinion is expressed that the government ought to have taxed considerably more heavily during the early years of the war.

Egypt, by George Young (Scribner's, pp. 353), consists of an historical survey of that country since the time of Napoleon, a more thorough account of the present conditions in Egypt, and an intensive treatment of the problem of the relations with England. Mr. Young discusses all possible aspects and solutions of that problem and decides in favor of having Egypt join the League of Nations in spite of the Protocol of 1924 which distinctly prohibits an appeal to the League in disputes arising between England and Egypt.

William Albery's *Parliamentary History of Horsham* (1295–1885) is a notable contribution to English local history in its political aspects (Longman, pp. 557). Horsham is an ancient parliamentary borough —one of the pre-reform, burgage-tenure type. In the old days it was captured, held, and exploited by various lordly patrons. The tale of how this was done is narrated in full. It is a tale of bossism unashamed. Since 1832 the chronicle deals with the various elections, including a definitive account of the notorious Horsham polling of 1847. For those who are interested in English elections, mediaeval and modern, the volume contains a wealth of material. There are many good portraits and other illustrations.

The House of Lords in the XVIIIth Century, by A. S. Turberville (Clarendon Press, pp. 556), is a continuation of the author's earlier volume on the House of Lords during the reign of William III which appeared fourteen years ago. Beginning with the dispute between the two houses in the early years of Queen Anne's reign, the book traces the development of the upper chamber through the era of Walpole, Chatham, and North down to the eve of the nineteenth century. The work has been done with great care and abundant documentation. Toward the close of the volume there are interesting chapters on the peerage in general, its social influence, and its relation to the constituencies. An excellent bibliography completes Mr. Turberville's study, which may be commended as a model of its kind.

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The latest volume in the Whitehall Series deals with *The Board of Education* (Putnam's, pp. 299) as a branch of British national administration. The author is Sir Lewis A. Selby-Bigge, the permanent secretary of this department. This volume maintains the good standard set by earlier volumes in the series. Not the least interesting among its various chapters on history, organization, and methods is one entitled "What the Board Does Not Do."

A compact single volume on *La Troisième République,* by the facile French journalist, Raymond Recouly, has been published by Librarie Hachette (pp. 337). With swift and incisive strokes the author pictures the outstanding happenings of this fifty-seven-year stretch—the Commune, the septennate, the Berlin Congress, colonial expansion, Boulanger, the Panama scandal, Dreyfus, the struggle with clericalism, Morocco, the war, and the peace. It is a glowing panorama, and all very cleverly delineated. The book deserves to be translated into English.

Those who desire to have at hand a concise, clear, and readable survey of Japanese history from earliest times to the present day will find a book to their liking in Herbert H. Gowen's *Outline History of Japan* (Appleton, pp. 458). The volume is well-proportioned and gives due emphasis to all the factors which are now regarded as consequential in the making of history. There is a useful classified bibliography.

Professor F. C. Dietz, of the University of Illinois, has written a one-volume history of England called *A Political and Social History of England* (Macmillan Company, pp. 772). If the title had been "The Financial Chronicles of England" it would have come nearer to describing the contents of the book. Taxation and business development are the two favorite topics of the author, and he deals with them enthusiastically and interestingly. He revels in the economic causes of wars, and it is surprising to find that he does not consider them of supreme importance in the last great struggle. Perhaps the most serious gap in the book is the lack of adequate discussion of the Statute of Artificers. Undoubtedly that act is meant when the Statute of Apprentices is mentioned on p. 180, and eight lines are given to a description of that and the Poor Law of 1601. This hardly seems sufficient, especially in view of the fact that the author himself frequently mentions the Tudor concept of the well-ordered state as a basis of comparison with later theories and conditions. Another new one-volume *History*

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of Great Britain has been written by Professor Howard Robinson (Houghton Mifflin Company, pp. 952). It devotes special attention to the British dominions.

The second volume of Hillaire Belloc's *History of England* (G. P. Putnam's Sons, pp. 478) continues his attack upon the accepted version of constitutional history as expounded by Stubbs, Maitland, et al. If the author had been a little more careful in details—as, for example, when he calls the eldest son of Henry III, Prince of Wales (pp. 356–7) —his major premises might bear more weight. No one can deny that the book is an entertaining one, whatever its value as history.

W. Steward Wallace has published in booklet form the notable essay on *The Growth of Canadian National Feeling* (Macmillan Company, pp. 85) which appeared in the *Canadian Historical Review* some years ago. In this republication the essay has been considerably expanded and somewhat revised.

The British Coal Dilemma, by Isador Lubin and Helen Everett (Macmillan Company, pp. 370), deals fully with the various phases of this subject, including the political implications.

International Law and Relations

China and Foreign Powers, An Historical Review of Their Relations (Oxford, pp. vi, 78), was prepared by Sir Frederick Whyte, one of the British delegates to the 1927 Institute of Pacific Relations, as a "memorandum on the history of British relations with China." The title, *China and Foreign Powers* is misleading: throughout the thirty-page historical summary, Russia (Imperial or Soviet), Japan, and the United States appear only incidentally—when or as their policies affect the policy of Great Britain in China. The Appendix (pp. 39–78), which contains only British and Chinese documents, emphasizes even more strongly the exclusively British aspect of the memorandum. The documents included in the Appendix, while interesting, are not particularly well chosen. To a non-British reader it would seem that Chien Lung's oft-cited "Mandate" to George III and Palmerston's despatch of February 20, 1840 (which, incidentally, weakens, by the space it devotes to the subject of opium, Sir Frederick's objection to the term "Opium War"), might well have been omitted to make room for such documents as Secretary Hay's "open door" notes and the answers of the several powers to which the notes were addressed. The inclusion of this material

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would have enabled the less informed among his readers to check up on the author's statement (p. 9) that "Great Britain assented to the principle without reserve, the other powers with qualifications, while Russia was evasive and hostile." Russia's evasion may be conceded; but the reviewer can find no qualifications in the replies from any of the other powers, while the British acceptance "in regard to the leased territory of Wei-hai-wei, and all territory in China which may hereafter be acquired by Great Britain by lease or otherwise" (Lord Salisbury to Mr. Choate, Nov. 30, 1899), certainly appears to exclude the Kowloon Extension which had been acquired by lease during the previous year. If space permitted, detailed exceptions might be taken to other statements and assumptions which appear in the work. An official career in India and a desire to cultivate Chinese good-will do not, of themselves, constitute adequate qualifications for writing an authoritative summary of British-Chinese relations. Despite its shortcomings, the pamphlet deserves some attention, since it reflects a growing desire in Great Britain to improve, even at the expense of certain local British interests in China, the basis of relations between the two countries. (G. N. S.)

L'antagonismo anglo-russo in Asia nell'ultimo ventenuio (1907–1927), by Giambattista Mazzoleni (pp. 72), is the first of a series of studies to be published by the Faculty of Political Sciences of the University of Pavia. This *Colonna die Scienze Politiche* will be a supplement to the well-known and scholarly *Annuario di Politica Estera*. The series of studies will be divided into three parts, dealing with political facts, political theory, and international economic and financial questions. The first study here presented makes the reviewer hope that many more will follow in its path. It is a clear and dispassionate analysis of the recent history of Anglo-Russian relations in the Far East, taking into special consideration Afghanistan, Persia, and China. The emphasis, however, is decidedly upon the latter. While certain minor errors of fact might be pointed out, it may suffice to say here that the author clearly recognizes the tactical advantages which the Russians have in Asia on the basis of their political philosophy. The reviewer agrees with the author that the outlook for the future is quite menacing at present. The economic and cultural significance of China makes a peaceful establishment of satisfactory governmental conditions there a prerequisite to satisfactory developments in Asia.

The new title, *The Essentials of International Public Law and Organization*, which Professor A. S. Hershey has given to the revised and

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enlarged edition (Macmillan Company, pp. xxii, 784) of his earlier work, *International Public Law*, is in recognition of the "continued progress of international coöperation, legislation, and organization." In conformity with this progressive emphasis there has been added a chapter dealing with the prevention and solution of differences through international organization and coöperation. As in his earlier work, Professor Hershey, in dealing with multi-lateral treaties such as the League covenant and the Hague conventions, in the main limits the text to quotations from the conventions while adding copious footnotes illustrating the development of their provisions. The very useful introductory chapters of the first edition on the growth of international law have been lengthened by a summary of the events leading up to the World War and by a new chapter on "The Paris Treaties and After."

Two more of the excellent publications of the Naval War College have appeared. *International Law Documents, International Agreements, 1924* (Government Printing Office, pp. 190) contains the text of many important treaties and conventions, among them the Washington treaty on limitation of armament, 1922; Nicaraguan Canal route convention, 1914; Neutralization of Aaland Islands convention, 1921; a group of mandates; the treaty between Great Britain and the United States in regard to smuggling of intoxicating liquors; and the report of the commission of jurists upon radio and aërial affairs, 1923, as well as other documents of almost equal importance. *International Law Documents, Regulation of Maritime Warfare, 1925* (Government Printing Office, pp. 207) is a digest of all such regulations as issued through the Hague conventions, the Declarations of London and Paris, the Institut de Droit International, and by the various governments. Regulations originally in French have, in general, been left in that language; all others are in English.

Nation und Staat is a new periodical devoted to the minorities problem and published by the *Universitätsverlagbuchhandlung* in Vienna. In the first number there is evidence of the competence of the editors and the soundness of their aim (to present a comprehensive and unified view of the problem in order to balance the fragmentary and occasional treatment thereof found in current periodicals and newspapers). The staff and list of contributors is to be very cosmopolitan, or at least multi-national. Two dangers confront the new periodical: the danger of exaggerating the importance of the cause of the minorities, a danger to which most of its friends succumb, and the danger of becoming too

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largely an organ of German minorities. Of both of these dangers there are traces in the first number. (P. B. P.)

The *Third Annual Report of the Permanent Court of International Justice* (Sijthoff Publishing Co., Leyden, 1927, pp. 426) covers the period June 15, 1926, to June 15, 1927. The general plan is the same as in the preceding reports, but there are new features designed to furnish a more systematic survey of the Court's activities and to facilitate reference to the forty-eight other volumes of the Court's publications to date. The bibliographical list of books, articles, and documents relating to the Court, presented in Chapter IX, includes more than six hundred new titles. Chapter X completes the "Collection of Texts Governing the Jurisdiction of the Court" which was published in 1926.

There seems to be no end to the types of text-books in civics—community civics, economic civics, social civics, every-day civics, and now *International Civics*, a text-book by Professor Pitman B. Potter and Mr. Roscoe L. West (Macmillan, pp. 315). In brief compass and in clear fashion the authors give a summary of international law, organization, relations, and problems. Three chapters are devoted to the League of Nations.

Last year, in the course of his leisurely jaunt around the world, Professor Manley O. Hudson gave four lectures on world problems at the University of Calcutta. These have now been published by the Calcutta University under the title *Current International Coöperation* (pp. 149). They deal with the League of Nations, the rôle of international courts, and the current development of international law.

Mr. Henry L. Stimson's mission has resulted in a book, *American Policy in Nicaragua* (Scribner's, pp. 129). It deals with the historical background of the Nicaraguan embroglio, explains the settlement of 1927, and gives the author's opinions as to the essentials of American policy in the future.

The Outlawry of War, A Constructive Policy for World Peace, by Charles Clayton Morrison, editor of *The Christian Century* (Willett, Clark, and Colby, pp. 300), is a point of view rather than a detailed study. A sentence italicized by the author gives us his main conclusion: "On the day after the Senate of the United States passes the Borah resolution looking toward the outlawry of war the business of world

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peace will pass out of the hands of the war offices and the diplomats into the hands of the people themselves."

Local Government

The story of a grim generation is vividly narrated in Denis T. Lynch's volume on *Boss Tweed* (Boni and Liveright, pp. 433). William M. Tweed deserves a biography more than some of his compatriots who have been accorded this honor during the past few years, for he occupies a unique place in American history. His fame is world-wide. His luster as the primate among urban peculators has not been dimmed by the lapse of a half-century, nor is it likely to be in the decades to come. The whole story of Tweed's boyhood, his initiation into politics, his rise to the pinnacle of power, and his drop into the abyss is told in a sprightly, journalistic style, with emphasis on the salient and the picturesque. It is the truth, but it reads like fiction. The book is one that every serious student of practical politics should read and own.

Students of municipal government will find a great deal of helpful illustrative material in John Griffen Thompson's volume on *Urbanization* (Dutton, pp. 683). A large portion of the book is devoted to a study of city growth in its effect upon government. There are interesting chapters upon urbanization in its relation to political activity, political leadership, political corruption, the efficiency of government, and so on, all of them presenting various phases of the subject, both old and new. Many of the author's discussions are historical; indeed, about half the book is of that nature. There is an extraordinarily complete index, occupying sixty-four pages.

In *Measuring Municipal Government* (Municipal Administrative Service and School of Citizenship and Public Affairs, Syracuse University, Publication Number 4, 1927, pp. 88) Dr. Clarence E. Ridley analyzes and discusses previous efforts to set up criteria for measuring the effectiveness of municipal administration and afterwards puts forward his own criteria for measuring the work of fire, health, police, and public works departments. He believes that the results of government are measurable, but concedes that the development of measurement standards "will be a slow process." An appendix contains useful tables and lists, including an approximately complete bibliography of the subject.

Twenty Years of Municipal Research, a pamphlet prepared by Mr. H. H. Freeman, director of the Buffalo Municipal Research Bureau,

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was first published by the Government Research Conference in 1926. A new and slightly enlarged edition (pp. 36) was issued in 1927. The booklet brings together a good deal of interesting information and concludes with a convenient directory of governmental research agencies, some eighty in all. It, however, hardly more than suggests the comprehensive treatise on the subject that might profitably be written.

The Preliminary Report of the Special Joint Committee on Taxation and Retrenchment upon *Tax Exemption in the State of New York* (Legislative Document, 1927, No. 86, pp. 263) is full of statistical and other information on conditions in that state. The report is of still further value inasmuch as it contains a digest of exemption provisions in all of the states and indicates whether such provisions are constitutional or statutory.

An excellent example of New England town history at its best is *The Birthplace of Vermont, a History of Windsor to 1781*, by Henry Steele Wardner (Scribner's, pp. 562). To those interested in early town and state government it offers a wealth of material in the way of records of town and parish meetings and of the early charters and constitution. Many parts are too detailed for general reading, and there are too many lists of names for those whose ancestors did not live at Windsor; but the book is well and intelligently written, and judicious skippings make it a volume to be perused for pleasure as well as profit.

During the past year the Detroit Bureau of Governmental Research has issued several special reports on the financial problems of certain school districts, a statement of the real estate owned by the city of Detroit, and a second analysis of the Detroit special assessment fund.

Political Theory and Miscellaneous

Messrs. Harcourt, Brace and Company have published, under the general title *Main Currents in American Thought*, two volumes by Vernon L. Parrington on *The Colonial Mind* (pp. xvii, 413) and *The Romantic Revolution in America* (pp. xxii, 493). Although the title of the volumes is widely inclusive, the subject-matter dealt with is relatively narrow. There is little or nothing about the literature of the arts, the drama, music, science, or journalism. The emphasis throughout is upon political thought, in spite of the author's academic affiliations with a department of English. For students of historical politics the work is unusually pleasing and worth while. It is doubtful

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if any of its readers will agree entirely with the selection of material or with several of the author's conclusions, but it is more than probable that they will read it with enjoyment and criticize it with respect. Though the first volume is devoted mainly to political thought, the treatment of the greatest period of American political thought, 1763–1789, is one of the poorest things in the whole work. Certain of the discussions of particular writers are contributions of genuine insight, but the sweep of the period is lost. Neither the various steps in the development of the theoretical opposition to Great Britain nor the growth of more positive and constructive political ideas and institutions in the state and central governments are adequately suggested. We owe the author gratitude for the many extracts from the sources which he includes in his pages, but some of the most fundamental of source books—especially the journals of state and national legislative and constitutional assemblies—he seems not to have consulted. However, it should also be said that by giving a considerable amount of attention to several Tory controversialists the author has presented a better view of that lost cause than is ordinarily the case with general surveys. *The Romantic Revolution in America* is a fairly accurate title for the literary movements of the period from 1800 to 1860, but it is not a particularly meaningful label to attach to such a varied gallery as that containing portraits of Taylor, Wirt, Calhoun, Marshall, Stephens, Jackson, Kent, and Story. Most of the particular sketches are delightful, although there is again the lack of a clear picture of the developments about and upon which the theories of these men were founded. Professor Parrington announces a volume in the near future dealing with the period since 1860. It will be interesting to see which of the many currents of intellectual expansion during this period he charts for the main stream. Particularly will it be interesting to see whether he is able to discover navigable channels in the confused waters of recent political thought. B. F. W.

The Spirit of '76 and Other Essays (Robert Brookings Graduate School, pp. 135) consists of three lectures delivered before the Brookings School on November 19, 1926, by Professors Carl Becker, J. M. Clark, and William E. Dodd. Professor Becker commemorates that year of miracles by transcribing a mythical manuscript giving an account of the growth of the "revolutionary" temperament in one Jeremiah Wynkoop, a prosperous and rather conservative merchant of New York City. Professor Clark deals with Adam Smith and *The Wealth of Nations*,

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and Professor Dodd tells how Virginia took the road to revolution, and particularly Patrick Henry's part in the melodrama. While none of the lectures make any very notable contribution to our knowledge of the subjects, they are by no means to be dismissed as light or unimportant. Much well digested learning is in evidence in all of them, and their literary style is wholly delightful.

Alfred A. Knopf has published an American edition of *The Decline of the West: Form and Actuality,* by Oswald Spengler (authorized translation by Charles Francis Atkinson, pp. 443). Since the appearance of Spengler's book in Germany some ten years ago it has been analyzed, dissected and criticised by a veritable army of historians, philosophers, and sociologists. Though innumerable errors in factual detail have been demonstrated, it still stands almost unchallenged as one of the great works of our time, an outstanding contribution to the philosophy of history and a masterly synthesis of human knowledge. The stress laid on the fundamental individuality and diversity of human cultures, on the morphology of each, and on the inevitable decline of our own civilization opens up large fields for thought and broad vistas for exploration. That the book has not long since been made accessible to the English reader is truly astonishing. The present translation is, on the whole, excellent, and the general get-up is entirely worthy of the work itself.

The announcement of *Der Amerikanische Journalismus,* by Emil Dovifat (Stuttgart: Deutsche Verlagsanstalt, pp. 256), is a happy sign of the reappearance in Europe of an interest in American realities which we hope will eventually supplant the great outburst of general and most unreliable writings on the United States as a whole—the "typical" American, the "soul" of America, and the like. After an historical introduction (which leans perhaps a little bit too heavily upon Villard's book), the author deals with American journalism at the present time. Its various aspects are discussed and the possible effects upon German journalism are evaluated. The author believes that deep-seated preference of the European generally and the German in particular for opinions (instead of facts) will prevent the German newspaper from travelling the same road which the American paper has taken during the last decades—from Greeley to Munsey and Hearst.

The Revolutionary Spirit in France and America, by Bernard Faÿ, translated from the French by Ramon Guthrie and published by Har-

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court Brace and Company (pp. 613), is a careful study of the subject as revealed in the literature of both countries at the end of the eighteenth century. Memoirs, pamphlets, letters, novels, plays, essays—in short all conceivable types of literature—have been examined and made to yield their contribution to the general fund of evidence. Although primarily in the field of history, the book is a valuable addition to our knowledge of the ideas of politics which were current at a time when theories played an important part in the radical changes in government then taking place. There is a good index, and the many reference notes are collected and placed in the appendix instead of in footnotes.

Francis Delaisi, the author of *Political Myths and Economic Realities* (Viking Press, pp. 446), is one of the foremost among contemporary French economists. In this interesting volume he manhandles a number of the political "myths" which are still doing business in spite of their sheer irrelevance to the actualities. In general, his plea is for a correlation between political thought and twentieth-century facts, more especially economic facts. Five chapters are devoted to "The Myth of Nationality" and an equal number to various formulas which came to the front during the World War and its aftermath. The discussions are not in all cases well organized, and some of them are rather discursive; but the book will prove of real interest to those who are now concerning themselves with the newer concepts of political science.

Professor Harry Elmer Barnes has published a substantial volume entitled *The Evolution of Penology in Pennsylvania* (Bobbs-Merrill Co., pp. 414). A short introductory chapter discusses the importance of the history of penology in general and of the development in Pennsylvania in particular. This is followed by longer chapters on the colonial period, the period from 1776 to 1835, and the period from 1835 to 1927. This shows that in the period from 1776 to 1835 Pennsylvania played a leading part in the movement for the reform of criminal jurisprudence and penal administration, not only in America but also in Europe. After 1835 conditions became steadily worse until 1913, when plans for improvement began to be formulated which have been applied to some extent during the last few years. The work includes a special discussion of prison industry and a chapter on Politics and Prison Administration.

The Life of Tim Healy, by Liam O'Flaherty (Harcourt, Brace and Company, pp. 318), is as far remote from the common notion of a biography as is well possible. There is, proportionately, very little of His

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Excellency, the Governor-General of the Free State, and that little is seldom complimentary. Call it a book about Ireland by an Irishman who can fight, laugh, and be witty, and one gets a better idea of the book than the title gives. Its historical value is practically naught, but it has originality, spontaneity, and the charm to be found in Irish writing at its best. Much more in line with conventional biography is the eulogy *Alfred E. Smith: A Critical Study*, by Henry F. Pringle (Macy-Masius, pp. 402). This book is an excellent piece of political propaganda. But besides booming the present governor of New York for the presidency, it is useful in that it can explain to those who are not for him the strength that is in the man and the forces that are behind him.

To what extent, and in what spheres of activity, do the excesses of a boom and the repressive influences of a depression leave an imprint upon the social life of the people? This is the problem attacked in Miss Dorothy Swaine Thomas' *Social Aspects of the Business Cycle* (Knopf, 1927, pp. 217). The resulting study, while admittedly limited by the inadequacy of trustworthy data, has been carried out on highly scientific lines and will prove a most valuable addition to the meager literature of the subject. The monograph was awarded the Hutchinson Research Medal by the London School of Economics and Political Science in 1924. Persons interested in the methodology of social research will find it of particular interest.

In his *Buying Power of Labor and Post-War Cycles* (Columbia University Press, 1927, pp. 164) Dr. Asher Achinstein has ingeniously used indices of employment, wages, and production, which have become more abundant since the war, in a study of the proposition that cyclical changes are to be attributed chiefly to the inability of the mass of workers to buy back the products of their labor. The study is confined mainly to factory labor.

Banking Theories in the United States Before 1860 (pp. 240), by Harry E. Miller, has been published by the Harvard University Press. The study includes not only the theories of bankers, public men, and writers on economics, but also the opinions and prejudices of the general public, and it traces the gradual education of this country in the proper functions of banks and the methods of banking.

The H. W. Wilson Company has published a second edition of what was formerly the *Sociology Section of the Standard Catalogue* under the

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title *Social Sciences Section*. This has been compiled by Miss Corrinne Bacon and includes a list of about 1,300 titles of the most useful books on political, social, economic, and educational questions.

Men of Destiny, written by Walter Lippman, illustrated by Rollin Kirby, and published by Macmillan (pp. 244), is a heavy dose of editorial writing, consisting partly of reprints of articles which have already appeared in various publications. Mr. Lippman holds forth upon a number of interesting personalities, including Governor Smith, H. L. Mencken, Justice Holmes, and others.

The Godkin lectures, delivered at Harvard in 1927 by President John Grier Hibben of Princeton, have been published by the Harvard University Press under the title *Self-Legislated Obligations* (pp. 40). One lecture deals with "Society and the Individual"; the other with "The Society of Nations."

The Russell Sage Foundation has published a volume on *Postponing Strikes* (pp. 405) by Ben M. Selekman. It is a study of the workings of the Industrial Disputes Act in Canada, commonly known as the Lemieux Act.

George Crompton's new book on *The Tariff* (Macmillan, pp. 226) contains a general survey of the contest between free trade and protection since the time of Adam Smith and summarizes the arguments on both sides.

Robert R. Kuczynski's volume on *American Loans to Germany* (Macmillan, pp. 378) contains a critical analysis of the terms on which Germany has floated American loans since 1923. During these four years Germany has borrowed about a billion dollars abroad, and of this total almost two-thirds has come from the United States. The author of the book is a well-known German financial editor and economist.

A recent text-book for schools is *Citizenship through Problems*, by James B. Edmondson and Arthur Dondineau (Macmillan, pp. 550). It is intended for use in the junior high school grades.

The Vanguard Press has added another book to its Social Science Classics, *Equitable Society and How to Create It*, by Warren Edwin Brokaw (pp. 365). It has also published *The Foundations of Modern Civilization*, by Harrison C. Thomas and William A. Hamm (pp. 257), an historical resumé from prehistoric man to the French Revolution.

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RECENT PUBLICATIONS OF POLITICAL INTEREST
BOOKS AND PERIODICALS

CLARENCE A. BERDAHL
University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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Bemis, Samuel Flagg, ed. The American secretaries of state and their diplomacy. Vol. III. Madison, Smith, Monroe. Pp. ix+320. N. Y.: Knopf.

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Brownell, W. C. Democratic distinction in America. N. Y.: Scribner's.

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Crompton, George. The tariff: an interpretation of a bewildering problem. Pp. 235. N. Y.: Macmillan.

Darrow, Clarence, and *Yarros, Victor.* The case against prohibition. N. Y.: Boni & Liveright.

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Jackson, George L. The development of state control of public instruction in Michigan. Pp. 381. Ann Arbor: Mich. Hist. Commission.

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———. Farm aid. *Glenn W. Birkett.* Atlan. M. Dec., 1927.

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